

WHITE HOUSE ACCESS TO FBI BACKGROUND SUMMARIES

Y 4.J 89/2:S.HRG.104-887

White House Access to FBI Background Summaries, S. Hrg.
104-887, June 20, 28, and September 25, 1996 (104-2)

INGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

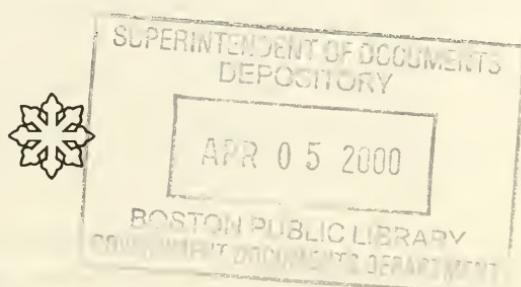
ON

EXAMINING THE DISSEMINATION OF FEDERAL BUREAU OF INVESTIGATION BACKGROUND INVESTIGATION REPORTS AND OTHER INFORMATION TO THE WHITE HOUSE

JUNE 20, 28, AND SEPTEMBER 25, 1996

Serial No. J-104-86

Printed for the use of the Committee on the Judiciary



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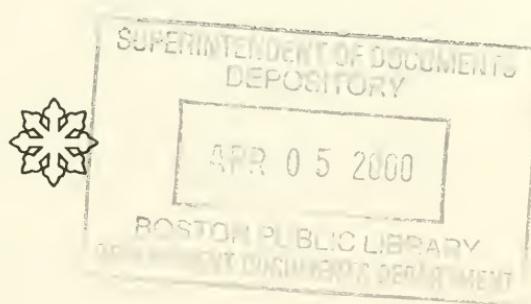
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WHITE HOUSE ACCESS TO FBI BACKGROUND SUMMARIES

THURSDAY, JUNE 20, 1996

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 10:03 a.m., in room 216, Hart Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Simpson, Grassley, Specter, Brown, Thompson, Kyl, DeWine, Abraham, Biden, Kennedy, Leahy, Heflin, Simon, Kohl, Feinstein, and Feingold.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Today the Senate Judiciary Committee examines some of the facts concerning the White House's improper acquisition of FBI background file summaries of at least 408 individuals, most of whom had worked at the White House under Republican administrations and who no longer had access to the White House. It is staggering to think that the sensitive background files of any individual were being pored over by President Clinton's political appointees or operatives.

The exposure of this abuse was delayed because, in our opinion, the White House stonewalled Chairman Clinger behind the cloak of executive privilege until it faced a possible contempt charge. The first reaction of the White House to the exposure of this abuse was to demand an apology from the critics of the administration's continued misuse of the FBI. That these files found their way to the xerox-equipped office suite of political operatives, combined with the White House's shirking of any real accountability, demonstrates, at least in my opinion, the arrogance of power which has plagued the Clinton White House.

As one who has seen FBI background files and summaries—I think everybody on this committee has—I can tell you right now why Americans need to be concerned. Frankly, in these files, it is all there: medical history, income and financial records, possible past drug use or alcohol abuse, and the confidential opinions and rumors of colleagues and neighbors—you name it. Even statements of the insane sometimes happen to be in these files. Sometimes they are listed under T1, T2, and T3 because these people won't give their names, and yet say the most scurrilous things. And we on this committee, I think, have done a very good job through the

years, on both the Democrat and Republican sides, to sift through these materials and not allow anybody to be besmirched.

But you name it. Those types of things are in these files. These files and summaries are so private that, even when the Senate is exercising its constitutional advice and consent role in reviewing judicial nominations, White Houses have insisted for years that committee staff be present when even Senators review the files, to assure that the integrity of the files are maintained. Yet unverified tidbits, juicy gossip, and personal information were simply turned over to some political partisans in the White House whose job it was to search for derogatory information.

For at least 408 men and women, these most personal and private of matters were in the possession of at least two long-time Democratic operatives who, using White House resources, simply asked for them. The FBI gave them what they asked for, no questions asked. As a result, the aspirations of more than 400 people have been compromised by the knowledge that personal information could be used against them at the whim of partisan political operatives.

Quite simply, this was a deeply disturbing, flagrant abuse of power. And I would remind my colleagues that it is not only the well-known Americans, like a Secretary of State or a White House Chief of Staff, whose privacy was violated. Public-spirited Americans from all walks of life, some right out of college, some working as interns, who came to serve their country, have had the most personal of files exposed to political operatives working within the administration.

According to the FBI, this White House has requested name and background checks on more than 22,000 individuals. This stack right here, this huge stack of paper right there, just look at that.

Senator LEAHY. Do you want to hold those up again, Mr. Chairman?

The CHAIRMAN. I can't lift them. I don't think I could do it twice.

I assume that the vast majority of these requests were legitimate, and I think that assumption is probably well placed. But this huge stack of paper is the purged list of names on whom requests were made for 1993 and 1994 alone. We do know that 408 of these 22,000 inquiries were improper. Unfortunately, the only basis we have for knowing that there were only 408 unjustified requests are the assurances of the White House.

Once again, as in the White House's abuse of power when it misused the FBI in the Travelgate fiasco, the White House dissemble-peddling operation has kicked into gear. First they said that improper requests were made to complete unfinished background information folders. Then the story was that the documents may have been requested in response to a GAO request. That dissemble had a short shelf-life, so the story changed yet again. The files, an unnamed White House official said, were requested as part of an effort to collect FBI background reports on permanent White House employees. According to the White House aide, the fact that Republican files were requested was an innocent bureaucratic mistake made by a civilian Army detailee working off of an inaccurate list provided by the Secret Service. The detailee, Anthony Marceca, told the press, "I worked off the Secret Service list. I didn't know who

these people were, I just processed names * * * Names like James Baker and Ken Duberstein. And this veteran Democratic political operative didn't know who these people were.

According to White House senior adviser George Stephanopoulos, those who had raised concerns now owed him and the White House an apology. This arrogance of power has permeated this White House and is perhaps the root cause of this episode. To suggest that the American people, the Congress, and the victims of this flagrant abuse of power should apologize to anyone is appalling. Chief of Staff Leon Panetta, to his credit, issued a belated apology.

No thanks to the White House, we now know that much of what the White House told us 2 weeks ago was false. We have learned, through no help from the White House, about Messrs. Livingstone and Marceca's intense involvement with partisan politics.

The Secret Service has told us that it could not have produced the list Mr. Marceca was using. We have learned, no thanks to the White House, that the acquisition of these files was "unquestionably unjustified." We have also learned that, according to Mr. Livingstone, access to these files was not limited to Livingstone and Marceca. We now know that an FBI preliminary criminal investigation of the White House has been initiated. At least that is what the Washington Post says.

So, as we begin this hearing, the most ethical White House in history is facing another criminal investigation of itself. Although she had originally instructed the FBI to conduct a preliminary investigation, Attorney General Reno will today, it is my understanding, seek to have the independent counsel's jurisdiction expanded so that Mr. Starr may conduct this investigation. The Attorney General concluded that it would constitute a conflict of interest for the FBI to investigate an improper episode involving both the White House and the FBI. Personally, I think this is a prudent step, although I would have gone along with the FBI investigation. Given Mr. Starr's record of fairness and thoroughness, I believe the Nation will have greater confidence in the integrity of the Department's investigation, and I commend General Reno for doing this and respect her for it, as I have in the past.

Now, I have wanted this Presidency to succeed. I have argued from the beginning that President Clinton should come clean and shed himself of these ethical tribulations. Not only has he not done so, he has bent over backwards to protect those who have gotten him into these predicaments, and this only heightens some of our concerns.

This is an issue that transcends political party. Unless this Congress acts to restore public trust in the FBI, the White House, and in our ability to maintain the integrity of Government-held files, our national security and private protections risk permanent damage.

Today we are going to hear testimony from some of those whose files were violated. We will also learn more about the FBI's internal inquiry and what role, if any, the Secret Service may have had in this matter.

I am really concerned about individuals who no longer work for the White House who are ordinary people, who really feel very

abused by this process, and I think rightly so. And I look forward to hearing today's testimony and will move on from there.

Now, I want to make just one other brief point. We received at midnight last night from Mr. Jack Quinn, the White House counsel, a response to the letter that we had sent last week to White House Chief of Staff Leon Panetta. Two features about Mr. Quinn's letter are noteworthy. The first is that he said, to my surprise, that the White House will not perform any internal investigation of this matter. The other point is that the White House did not respond to most of our inquiries.

I would like both letters to be placed in the record at this point.
[The letters follow:]

THE WHITE HOUSE
WASHINGTON

June 19, 1996

BY HAND

The Honorable Orrin G. Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Chairman Hatch:

This letter is in response to your letter of June 13, 1996 to Leon Panetta.

As you know, the investigation of the FBI files matter has been handled by both the Office of the Independent Counsel and the Federal Bureau of Investigation. The White House has been cooperating fully with these investigations. As a result, we are not undertaking our own investigation or conducting file searches. However, we will provide the information we have available that bears on your inquiries.

1. We have not undertaken to determine the identity of all persons with authority to request background files from the FBI in December 1993. In December 1993, the Office of Personnel Security's Director was Craig Livingstone, the Executive Assistant was Mary Anderson, and the staff assistant was Lisa Wetzl. Also detailed to that Office was Anthony Marceca. Mr. Livingstone reported to Mr. William Kennedy, Associate Counsel to the President, who in turn reported to Mr. Bernard Nussbaum, Counsel to the President.

2. We are not aware of any memorandum on White House stationery regarding Billy Dale that was sent on December 20, 1993. However, the request to the FBI for copies of Mr. Dale's previous reports is attached.

3. With respect to your questions about the request for Mr. Dale's file, please see the attached declaration of Anthony Marceca. We believe that the person referred to in paragraph 4 of Mr. Marceca's declaration is Nancy Gemmell.

4. Regarding the receipt and maintenance of Mr. Dale's file, please see the attached statement of Jane Sherburne.

5. Regarding your questions about "Project Update," in addition to Mr. Marceca, we understand that Lisa Wetzl, Executive Assistant to the Director of Personnel Security, also worked on the Update Project.

6. With respect to whether it is routine for the White House to request prior FBI reports for all holdover employees, we understand from the recently completed FBI Report that it is indeed routine to request all prior FBI reports.

7. To the extent we have information responsive to your questions about the requests for and chain of custody of any of the mistakenly obtained FBI reports, please see the Sherburne statement, the Marceca Declaration and the attached Declaration of D. Craig Livingstone. Further, we understand that Lisa Wetzl is the person who identified Mr. Marceca's mistake.

8. The memorandum that Ms. Nolan wrote to Walter Dellinger at the Department of Justice did not request advice on the release of FBI background information. Instead, as part of its investigation into the Travel Office matter, the General Accounting Office had requested the personnel files (which do not include FBI reports) of the seven fired individuals. Ms. Nolan was seeking advice as to whether fulfilling that request would be appropriate. Copies of relevant documents, which have been provided to the House Government Oversight and Reform Committee, are attached for your information. We are not aware of a written reply.

9. We have no information responsive to your question about requests for FBI reports on Members of Congress or their staffs.

10. Enclosed is a statement released by then-White House Counsel Bernard Nussbaum which governs contacts between the White House and the FBI in the event of a potential investigation. We will provide other materials that may be helpful to you under separate cover as soon as possible.

In addition to responding to your questions, I believe it would also be helpful if I explained to you the measures taken by the White House in the wake of the mistaken and inappropriate request for FBI background investigation information in late 1993 and early 1994.

As indicated above, the White House has requested and received background investigation reports from the FBI for many years. The information is sought and used to assist the White House in making determinations about the suitability of

individuals for access to the White House for employment or other official purposes.

Plainly, the requests for background investigation information that are the subject of your hearing were wrong. Based on representations made to us to date, it appears that the requests were the product of innocent errors. Obviously, if we learn otherwise with respect to White House staff, we will act swiftly and decisively.

After learning of this situation last week, President Clinton informed me in the clearest terms that he wanted (1) the American people to know the truth about what happened in this matter, (2) disciplinary action to be taken, as appropriate, and (3) policies and procedures to be initiated that would guarantee to the American people that this mistake could not happen again.

I will address each of these points in turn.

First, we have made clear that the White House not only welcomes but also encourages a complete and vigorous investigation into the matter by the appropriate law enforcement office. As you know, the Attorney General has directed the FBI to conduct a prompt and thorough investigation. I have said publicly and I say here again that the White House welcomes that investigation, and we will work cooperatively with the FBI to facilitate the prompt completion of its investigation.

Second, the President's directive that any appropriate disciplinary action be taken will be implemented based upon the facts developed in the upcoming review by the FBI. Earlier this week, Craig Livingstone, who headed the personnel security office, asked to be placed on paid administrative leave, and we agreed that that was appropriate. Mr. Livingstone will not return to the White House unless and until this matter is clarified to the satisfaction of the Chief of Staff. If he does return to a position in the Administration, it will be to one that is appropriate and not to the White House Office of Personnel Security, which, as described below, has been absorbed into the Executive Office of the President (EOP) Security Office.

Third, at the direction of the President, I have instituted new policies and procedures to prevent any recurrence of the events in question. We are confident that these reforms will help restore public confidence in the integrity of the personnel security system. These new procedures, which are as rigorous as they are unprecedented, include requirements that:

- control of the White House background investigation process be placed in the hands of a personnel specialist who is a career, non-political employee;
- current, express, written consent of an individual be obtained before the White House seeks his or her background investigation information from the FBI;
- the Counsel to the President or a specifically designated Counsel's Office attorney approve each White House request to the FBI for background information;
- the security or vetting officer who initiates the request certify that the request is made for official purposes only; and
- access to background investigation information is authorized only to those White House employees designated in writing by the Chief of Staff and the Counsel to the President.

No prior Administration had in place policies and procedures designed so effectively to prevent the type of mistake that occurred in this matter. The Report of the FBI General Counsel, dated June 14, 1996, found that the procedure by which the FBI provided background investigation information to the White House "has changed remarkably little over the intervening three decades" since the Johnson Administration. I am confident that our reforms will more effectively safeguard the privacy of the individuals whose background files are sought and obtained by the White House.

Below, I elaborate on some of the key changes in our policies and procedures:

On June 14, 1996, I initiated a series of reforms focusing on the process by which the White House requests background investigation information from the FBI. We will now require that White House requests to the FBI for background information be made only with the express written consent of the individual who is the subject of the investigation. The individual's consent must be signed within thirty days of, and must accompany, the White House request to the FBI. No information may be obtained without the individual's consent except in extraordinary circumstances set forth in a letter of justification to the FBI from the Counsel to the President concurred in by the Attorney General or the Deputy Attorney General.

Each request to the FBI must also be approved and signed by the Counsel to the President or a specifically designated Counsel's Office attorney whose regular duties require the review of such information. In addition, each request must be signed by the security or vetting officer who initiates the request, and that person must certify that the request is made for official purposes only. These new reforms also require identification of the specific reason why the information is being requested.

Today, I also recommended a restructuring of the personnel security functions at the White House to further accomplish the President's objective of ensuring that the mistake will not happen again. I suggested -- and Chief of Staff Leon Panetta and the President agreed -- that the administrative personnel security functions currently performed by the White House Office of Personnel Security be incorporated into the EOP Security Office. This change will be implemented immediately.

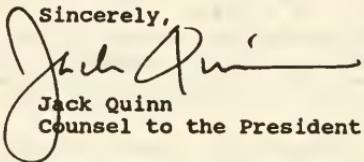
The EOP Security Office currently conducts personnel security functions for all EOP offices except for the White House Office, the Office of the Vice President, the Office of Policy Development, the National Security Council, and the Executive Residence. The restructuring announced today will bring the administrative personnel security functions for those offices within the purview of the EOP Security Office so that the EOP Security Office will have unified authority over all EOP personnel security functions.

The EOP Security Office is currently supervised by Charles "Chuck" Easley, a career employee who has served for ten years as the EOP Security Officer since joining the office in the Reagan Administration. Before coming to his current job, Mr. Easley had a twenty-year career in the U. S. Army, including eight years as the Technical Security Advisor to the Security Officer of the Joint Chiefs of Staff. Mr. Easley heads a career staff at the EOP Security Office and reports to the Associate Director for Human Resources Management of the Office of Administration, a career personnel specialist.

The EOP Security Office will perform its work on White House personnel in accordance with the procedures announced last Friday and described above. In addition, access to the background investigation information will be limited to those EOP and White House employees so authorized in writing by the Chief of Staff and the Counsel to the President whose assigned duties require the review or processing of such information.

I believe that the reforms we have now instituted will restore the public's confidence in the integrity of the process

by which the White House decides who appropriately may have access to the White House complex.

Sincerely,

Jack Quinn
Counsel to the President

Enclosures

cc: Honorable Joseph R. Biden, Jr. (with enclosures)

COPY

THE WHITE HOUSE
WASHINGTON

DEC 20 1993

(Date)

TO: FBI, LIAISON
FROM: BERNARD W. NUSSBAUM
SUBJECT: FBI Investigations

Subject's Name DALE, BILLY RAY

Date of Birth 04-05-37 Place of Birth Grundy, VA

Present Address _____

Request: XX Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation: Level I Level II
 Limited Update
 Other

The person named above is being considered for:

 White House Staff Position
 Presidential Appointment
VV ACCESS (S) _____

Attachments: NON-RESPONSIVE MATERIAL REDACTED
 SF 86
 SF 87, Fingerprint Card
 SF 86, Supplemer?

DEC 28 1993

DEC 28 1993

THE WHITE HOUSE
WASHINGTON

DEC 20 1993

(Date)

TO: FBI, LIAISON
FROM: BERNARD W. NUSSBAUM
SUBJECT: FBI Investigations

Subject's Name DALE, BILLY RAY

Date of Birth 04-05-37 Place of Birth Grundy, VA

Present Address _____

We request: Copy of Previous Report
 Name Check
 Expanded Name Check
 Full Field Investigation : Level I Level II Le
 Limited Update
 Other

The person named above is being considered for:

White House Staff Position
 Presidential Appointment
 ACCESS (S)

Attachments: NON-RESPONSIVE MATERIAL REDACTED

In response to your request, there are attached 11 items of information which may relate to the subject of your inquiry.

 SF 86 SF 87, Fingerprint Card
CGE 043642 SF 86, Supplement

DECLARATION OF ANTHONY MARCECA

I, Anthony Marceca, hereby declare:

1. I make this Declaration based on personal knowledge, of my own volition, and not because of any inducement, promise or threat of any kind.

2. In mid-August 1993, I was detailed from my position as an investigator with the United States Army Criminal Investigative Division to the White House Office of Personnel Security, where I remained until mid-February 1994. At that time I had, and to this day I have, a Top Secret security clearance.

3. One of my assignments at the Office of Personnel Security was to pick up and continue the project of recreating personnel security files on employees and officials from the prior Administration who continued in their positions with the Clinton Administration, as well as others who continued to have a legitimate need for access to the White House complex. It was my understanding that all personnel security files from the prior Administration were sent to the archives during the transition between Administrations. This project was known as the Update Project.

4. Just prior to beginning my duties with the Office of Personnel Security, I was briefed by a long-time employee of the Office who was retiring. She showed me the procedure to follow in performing the Update Project, which consisted of creating a new file folder for "holdover" personnel and others who continued to need access to the White House complex, and ordering a copy of each individual's "Previous Report" (i.e., the individual's prior

~

background investigation) from the FBI to be placed in his or her file. The employee who was retiring showed me the various lists of names for which personnel security files needed to be recreated. I understood that these computerized lists came from the United States Secret Service.

5. It was my understanding that every person on the lists from which I was working was properly included on the lists because they had a legitimate need for access to the White House complex. I was not told, and I had no reason to believe, that some of the persons on the lists no longer should have been included on the Secret Service's White House access list. By illustration, I recall seeing several former Bush Administration officials, such as ██████████, in the White House complex during my detail at the Office of Personnel Security. If I saw ██████████ name on the access list, therefore, it would not have struck me as odd.

6. It was not part of my job to determine who should or should not have been on the Secret Service's White House access lists. I was not asked to make any judgments, and I did not make any judgments, as to who should or should not be on those lists.

7. The procedure I employed for the Update Project was as follows. I took a name from the access list, and determined whether the Office of Personnel Security had an existing file on the individual. If there was not a file on the individual in the office vault, I would prepare a file folder and type a request on a pre-printed, xeroxed form, addressed to the "FBI, Liaison."

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- 2 -

asking for a copy of the individual's Previous Report. I also typed on the form the reason for the request to the FBI, e.g., "ACCESS (S)." I sent the form requesting a Previous Report to the FBI without showing it to anyone else in the Office of Personnel Security. When the Previous Report came into the office, I pulled the file I had created for the individual and reviewed the report to determine the date for the individual's next periodic reinvestigation, and to determine whether there was any information in the individual's Previous Report that could raise a question as to the individual's suitability to have access to the White House complex. In particular, I looked for inconsistencies between the information obtained by the FBI in its background investigation and the information voluntarily provided by the individual in his or her application for federal employment (SF-86). If the information I reviewed did not appear inconsistent, I delivered the file to the investigative assistant in the Office to initiate the process for the issuance of a pass and for filing in the Office vault.

8. As part of my consistent practice for the Update Project, I did not deliver the files or FBI Previous Reports to the head of the Office of Personnel Security, Craig Livingstone. I only delivered files that I created in the course of the Update Project for Mr. Livingstone's review if I discovered what I believed to be inconsistencies in an individual's paperwork.

9. As best I recall, there were only three files that I reviewed in the course of the Update Project that I delivered for

her

Mr. Livingstone's review. To the best of my recollection, none of these files were of former high-ranking Bush or Reagan Administration officials, such as [REDACTED]

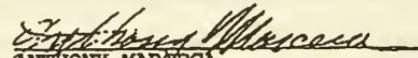
[REDACTED] My recollection is that one of the individuals involved worked for the General Services Administration, one worked for the telephone company, and one was a grounds keeper.

10. I was not asked to, and I did not seek to, obtain a Previous Report on any person for any reason other than to create a current personnel security file for an individual whom I believed was properly included on the White House access list. When I obtained copies of Previous Reports, I processed each one in accordance with the procedure I describe above, and did not single out any person for special scrutiny or treat any person differently, because of who he or she may have been.

16..

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. (28 U.S.C. § 1746(2))

EXECUTED ON JUNE 7, 1996.


ANTHONY MARCECA

STATEMENT

Jane C. Sherburne
Special Counsel to the President

June 5, 1996

- ♦ This Administration, following the practice of past administrations, routinely maintains in its files background investigation information from the FBI on every White House employee.
- ♦ The background investigation files are customarily requested by the White House from the FBI through the use of a standardized form, under the name of the current White House Counsel.
- ♦ We have some indication that during the December 1993 time period White House record keepers were making an effort to fill in background information folders that were incomplete. We believe Mr. Dale's records may have mistakenly been sought as part of this record-keeping effort.
- ♦ Based on the records now available to us, Mr. Dale's background file was delivered to the Security Office of the White House on January 6, 1994 and placed in the Security Office's vault. Available records show that Mr. Dale's file was not signed out of the Security Office vault at any time between January 6, 1994 and December 1, 1994. On December

1, 1994, Mr. Dale's records were removed to the White House archives. According to the preliminary information now available to us, Mr. Dale's records remained in the archives until May 21, 1996, when they were retrieved for the purpose of responding to Representative Clinger's Committee.

♦ We have been contacted by the Office of the Independent Counsel regarding this matter, and we will continue our consistent practice of providing whatever information and witnesses are necessary to the Independent Counsel's inquiry. (The Independent Counsel has been charged with examining issues related to the Travel Office matter.)

DECLARATION OF D. CRAIG LIVINGSTONE

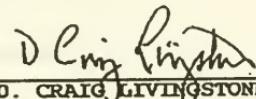
I, D. Craig Livingstone, hereby declare:

1. I make this Declaration based on personal knowledge.
2. I was never asked to obtain, I never instructed anyone to obtain. I never sought myself to obtain, and I never disseminated or asked anyone else to disseminate any information I learned from any FBI background files on any person for any improper purpose whatsoever.

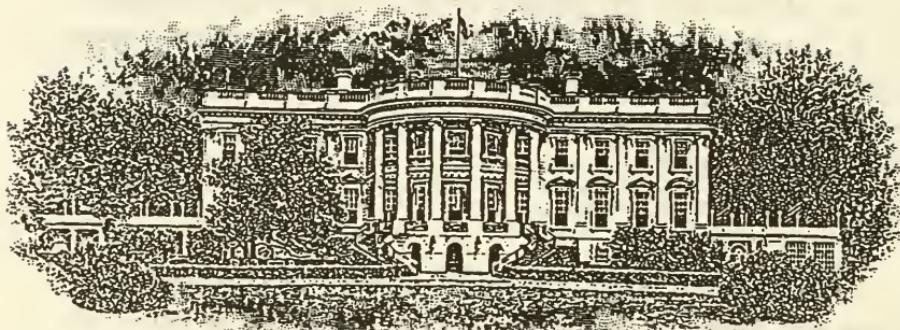
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

(28 U.S.C. § 1746(2))

EXECUTED ON JUNE 14, 1996.


D. CRAIG LIVINGSTONE

The White House



COUNSEL'S OFFICE

FACSIMILE TRANSMISSION COVER SHEET

TO: Walter Dellinger

FAX NUMBER: 514-0539

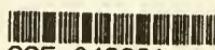
TELEPHONE NUMBER: _____

FROM: Beth Nolan

TELEPHONE NUMBER: 456-6229

PAGES (INCLUDING COVER): 3

COMMENTS: _____



CGE 043291

8/19/93

To: Walter Dellinger

From: Beth Nolan

Attached is the request we discussed. We would like your verbal advice on whether there are any legal constraints on our providing any of this material. If it is permissible for us to provide any or all of it, do we have an obligation to notify the affected employees?

If you think of other considerations we should be aware of with regard to this request, please let us know what they are.

Thanks.



CGE 043292

- (5) Personnel and performance records for the seven Travel Office personnel who were "fired", including appointment documents, resumes or applications, position descriptions, performance appraisals for the past three years, records of bonuses or awards, retirement applications (for those eligible who have applied), current pay levels, notification of termination and letters of resignation, records of reinstatement, and authorization of administrative leave.



CGE 043293

The White House
Office of the Press Secretary

For Immediate Release

May 25, 1993

**STATEMENT OF BERNARD W. NUSSBAUM
WHITE HOUSE COUNSEL**

By directly contacting the FBI concerning how to deal with allegations of possible wrongdoing by employees of the White House Travel Office, the White House Counsel's office violated no policy, procedure or other requirement. There is presently no requirement that such contacts involving matters of internal White House security be made initially through the Office of the Attorney General. It has been the practice of the White House Security Officer - in this instance, William Kennedy, Associate White House Counsel - to be in direct contact with the FBI concerning internal White House security matters.

With respect to matters outside the White House, there is a policy that any initial contact with the Department of Justice concerning any pending Justice Department investigation or criminal or civil case will be made only by the White House Counsel's Office and only with the Attorney General, the Deputy Attorney General, or the Associate Attorney General. That policy has continually been reaffirmed by the White House.

The Attorney General has expressed the desire that in the future, even with regard to matters of internal White House security, to avoid any possible appearance of impropriety, the White House should inform the Office of the Attorney General, the Deputy Attorney General, or the Associate Attorney General before contacting the FBI. Since the White House shares the Attorney General's desire to avoid any such appearance of impropriety, it has assured the Attorney General that such contacts with the FBI in the future respecting matters of internal White House security will be made initially through the Justice Department, as she requested.

There is nothing more important to this Administration than to preserve the integrity and the appearance of integrity of the Justice Department and the Federal Bureau of Investigation.

The Attorney General has reviewed this statement and is in full accord with it.

The CHAIRMAN. Senator Biden.

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator BIDEN. Thank you very much.

Mr. Chairman, you know of my great personal regard for you. I am a little disappointed, though, at the outset of this in that it seems to me we should have the trial before we have the hanging. We should hear the facts before we make a judgment.

I see staff just put up—I don't know what relevance it has to anything in terms of the inquiry. "[I promise] the most ethical administration in the history of the Republic"—President Bill Clinton. This has the slight aura of a political undertaking rather than a factual undertaking, but time will tell whether that is true or not.

I hope my instinct is wrong. I hope that we are going to look for the facts.

I would also want to suggest that I think it is very important at the outset, because I know how confused new members of the Judiciary Committee are over the last 23 years I have been on this committee about how to handle FBI files. As a matter of fact, I recall in hearings for Supreme Court Justices you and I—me as Chair—having to stop the hearing because Senators were inappropriately quoting from FBI files. So even Senators sometimes don't know. No Senator in particular, but understandably, it is a complicated area.

So I think it is important to set out at the outset why there is even FBI files, because I find when I go home people wonder, well, why do they have an FBI file? There is a lovely young woman who is a daughter of a constituent of mine, a very prominent Republican, whose name up in this file. People are asking me, Why would they want her FBI file? Who would do this? What is going on?

I think it is important for us to be able to—at least for me to be able to understand what happened here, how this works. I want to note for those who may be unfamiliar with the process that every administration keeps FBI background files on all persons, including employees, who have regular access to the White House and its grounds. Such employees include not only those who serve on the President's office staff, but also those who keep the White House running, everyone from the C&P Telephone workers to gardeners and kitchen help. The FBI information obtained on all these employees is used, is supposed to be used solely for the purpose of ensuring that those who can walk unescorted through the White House present no security risk to the President, his family, or Government officials of our Nation, as well as any visiting nation, and all those who work in the White House premises have to have that clearance.

Unfortunately, recent episodes—a plane crashing into the White House, automatic weapons attack, damage to the White House, just to name two—illustrate more than ever the unstable and dangerous nature of some people who seek to do harm to those who work in the White House. Protecting the safety of everyone in the White House is of paramount importance, and it is to this end that administrations after administrations have sought background in-

formation from the FBI for all those who have passes to enter the White House grounds.

Now, that is ostensibly the reason why anyone would do a background check on some kid who is 22 years old who works as an assistant to an assistant to an assistant in a press office, for example, as well as the Secretary of State.

Now, we convene these hearings today—at least I hope—to look into what appears to be a serious breach of privacy that occurred when FBI summaries of background information on former White House employees were improperly obtained by those from the White House, those who now work in the White House and through the FBI.

The overriding goal of this hearing, in my view, must be to examine the failures of both the White House and the FBI to have appropriate procedures in place in handling confidential background information and then to identify the changes necessary to ensure that such a breach of privacy never occurs again.

The public deserves to have confidence in how their Federal Government handles personal and private information, because every American at some point entrusts the Government with personal financial or other data whenever they file a tax return or other Federal form of application. The breach of privacy that occurred here is, thus, a breach of trust with every citizen in the United States.

Those of us who work in the Government and have control over or access to sensitive information about other Americans, it seems to me, have a special obligation to handle the information with the greatest respect and confidentiality. The members of this committee have personal experience, as you reference, Mr. Chairman, with this grave duty.

In the course of reviewing judicial nominations, this committee receives from the FBI not just several-page summaries, the kind of summaries that are in question here, which are narratives of a much longer file, but detailed, multipage FBI background investigative files on each nominee that, in my view, are basically a cesspool. They write down, the FBI writes down everything anybody tells them. They walk next door to the neighbor and say we are investigating John Doe, who is going to be a nominee for the Supreme Court or for whatever. What do you think of John Doe? And because John Doe's dog may have ripped up their petunias and they don't like each other, you may have someone say, well, you know, I think John Doe is probably on drugs, the way he lets his dog run around. They will write that down. That will be written down: He probably thinks John Doe is on drugs, the way he lets his dog run around.

Now, they don't attempt to, it is not their job to corroborate, confirm, or disprove any statement made. That is not what this file does. But that is in one of those big files. Excuse me. May I reach over here? These are individual names, but some FBI files are that thick. A single file is that thick, and it has that kind of garbage in it.

A summary is literally something that is that thick, and all it does is give a narrative of what this big file, which is not always that big, says.

Now, I am going to discuss the difference between these two kinds of reports in a moment, but I want to note the extensive security measures this committee has always taken when Senator Kennedy was chairman—since I have been here, Senators Eastland, Kennedy, Thurmond, Hatch, and myself. They were always taken to ensure absolute confidentiality of FBI information we receive.

For example—and I will only speak to the time when I was chairman—we operated under a memorandum of understanding with the Reagan and Bush administrations that set forth strict controls on access to FBI reports. One, only a limited number of staffers working for the chairman and the ranking member were permitted access to these files. We had to name who they were. We had to give those names to the White House and the Justice Department. Those staff members themselves then, before they could have access, had to undergo their own investigation. They had a background check done on them by the FBI. They sought security clearance. They received security clearance. And then they received special training from Senate Security on document security and how to handle them.

When the committee received a file from the FBI, a cleared staff member signed the receipt on taking custody of the report and entered the file into a log that the Senate maintained. The files were kept in locked safes inside an office that was locked at all times. Only people with security clearance named—and there were less than a handful—had keys to the office and the combination of the safes. Whenever another cleared staff member or a Senator on a committee requested a file for review, it was entered into a log. No copies were made of any pages in the FBI file at any time.

If a Senator wanted to see the file, I instituted a policy, which I think is still the policy: the cleared person would take the file to the Senator's office and not leave the Senator, sit there and watch the Senator read it. The Senator was not able to make notes or copies of it. It was handed back to the security officer, taken back to the safe.

As soon as the committee completes its work on a particular nominee, the FBI file in question is returned to the FBI. We don't keep them.

Now, this kind of scrupulous care was, in my view, owed to the nominees, as well as to the public who count on the integrity of this committee's review process. Unfortunately, it doesn't appear as though that necessary level of care was given either by the White House or the FBI in handling the background summaries on White House employees.

The process in question, as I understand it, involved obtaining—and I want to say, as I understand it, because hopefully we are going to get this nailed down through the period of this hearing. As I understand it, it involved obtaining previously prepared background summaries on so-called hold-over nominees.

For example, none of the witnesses here today would be here today if, in fact, they were held over by the White House and hired on by the White House. If they had said we want to stay on in the job and the White House said, yes, we want to keep you on in your job—it occasionally occurs from White House to White House—then

it would have been totally appropriate for the White House to ask for their file. Let's be clear what the inappropriate nature was here.

The inappropriateness was asking for a file of someone who no longer worked in the White House, no longer sought clearance, no longer wanted to be there, and no longer would have access. That is the problem. That is what we are looking at here.

I used to work for a lawyer named Sid Ballick. He was a great trial lawyer, and he used to—when he was teaching me how to try a case, he would say to the jury, always start off and say, Now, I want you to keep your eye on the ball. Keep your eye on the ball. The issue here is not whether my client is a good-looking guy, not whether or not my client you would allow to go out with your daughter, not whether my client is a nice guy. He is a rotten, ugly guy you wouldn't let go out with your daughter. The question is: Did he murder Cock Robin? That is the issue—not whether he is a bad guy, not whether he is a no good son of a gun, not whether he is ugly. Did he murder Cock Robin?

The issue here is, as I see it—and I may be educated differently—were the files that were obtained on people who no longer needed or wanted clearance in the White House? For if they were, then it is totally appropriate. And there are a lot of people who hold over.

Come the first day of the new President taking his term, everybody in the White House doesn't leave. It is not like, bang, everyone is gone. The Secretary of State is gone, but the assistant to the assistant who did the door, who did whatever, may still be there. And so the issue here is: Keep your eye on the ball. What was the bad thing done? The bad thing done was, at a minimum, people who no longer were associated or sought clearance had their summaries of their previously conducted investigations, which were on record during their tenure in the White House with the Bush administration, now sent back to archives or the FBI, requested because someone either thought they were still going to be around or knew they weren't and wanted to dig up dirt on them.

But if, in fact, any of the people before us today were going to stay on—for example, Mr. Billy Dale, a celebrated person these days, is going to testify. If he had stayed on as the head of the travel office, it would have been totally appropriate to ask for his file. Kind of funny, isn't it? But at any rate, the point here is the process in question, as I understand it, involved obtaining previously prepared background summaries on so-called hold-over employees, individuals that worked for the Bush administration and were to be retained by the Clinton administration. But those files, all of those people's files, had been archived by the Bush administration, which is appropriate, before President Clinton took office.

To reconstitute the security files on hold-over employees, the White House had an obligation—if they did it right, had an obligation to request from the FBI copies of previously prepared background summaries on those who were staying on. Those who were staying on. It had no obligation and it was inappropriate to request those summaries on people who weren't staying on.

I might point out summaries are the lowest level of the FBI report. Nothing anyone should see, I acknowledge, but they are the

lowest level, generally consisting of no more than a few pages of narrative summary of information obtained by the FBI during the investigation. Summaries provide limited information as compared to the often voluminous complete background files, which include raw data reported to the FBI in the course of their investigation.

In requesting the files, the White House apparently used a process and forms developed and used by four prior administrations, the actual form. The FBI processed these requests that they got in a form, a box was checked—I will go into that later—routinely, apparently as it had done under previous administrations. Yet neither the White House nor the FBI took the basic necessary step, in my view, based on what I know, of ensuring that the requests were limited to employees who were actually being retained by the Clinton administration.

Keep in mind, if they were being retained, it would have been totally appropriate and necessary to do this. As a result, over 400 files were—that we know of—were unnecessarily and improperly obtained by the White House and maintained for some time until the mistake was discovered by the White House, not by anybody else but by the White House, and they were first sent to the archives and then recently returned to the FBI. It is unnecessary, again, in the sense that these people were not being retained by the White House.

It is imperative, in my view—and I will finish, Mr. Chairman—that we determine how this failure could have occurred and that we identify the changes in policies that must be implemented immediately to ensure that no such breach ever occurs again. To the best of my knowledge, the concern that someone's reputation would be besmirched or they would, in fact, be blackmailed or that it would be used politically is a concern, but none that has been raised. There is no evidence anybody has been besmirched, anybody has been anything.

Now, both the White House and the FBI have already proposed changes in how they will handle requests for FBI information. We need to discuss today whether these changes are adequate and what more, if anything, need be done to restore the confidence of the American people in the handling of sensitive information in the Federal Government.

Finally, there has been some speculation, as I heard from you and others, Mr. Chairman, about whether these failures in the process occurred mistakenly or with the intent to improperly gather information for political purposes. I am unaware of any evidence that shows an improper rather than mistaken intent. I am not suggesting I know there was none. I know of none that has been offered yet.

Moreover, it appears to me that the process used seeking summaries, which contain the least amount of FBI information, for example, would not be the best place to dig up dirt. If you really wanted to do a job like the old days, you would go for the raw file. None was requested that I am aware of.

Nonetheless, the speculation raises a serious charge, and many questions are unanswered at this time. These questions also must be resolved if we are to reassure the American people that their trust in their Government is well placed.

I look forward to this hearing—and that is a lie. I really don't look forward to this hearing. I hate these kinds of hearings. I hate these kinds of investigative hearings. It is our job to do them, but my staff has written here, "I look forward to * * *" I don't look forward to this at all. And discussing how we can implement changes—this part I do look forward to—how we can implement changes that will protect the privacy of all citizens who entrust their government with sensitive personal information. And I suspect that my colleagues would acknowledge, although others have been equally as concerned, I don't think there has ever been anyone in the last 20 years who has been more concerned about privacy than this Senator in terms of how I have run this committee when I ran it and in terms of how I deal with notions of privacy. So I take it very seriously. At a minimum, there seems to be serious, serious, serious breaches in security. And at a maximum, we will see.

So I look forward to finding out the facts, Mr. Chairman, and I thank you for the time.

The CHAIRMAN. Well, thank you, Senator Biden. I appreciate your remarks, and I know my colleague from Delaware is not suggesting that the wrongful access to an FBI file summary is any less egregious than access to a full file, because the summary purpose is to draw out and summarize the problems and allegations contained in the full file. So the summary is just as sensitive as the full file. I know my colleague believes that, as I do, and I commend him for when he was chairman and since I have been chairman. We watch these files with great care, as we should, because we know that there is a lot of information in these files that just isn't true. But the FBI has a job to take down these comments, and we have to sift through them and do an honorable and good job, and I think this committee has done that for the most part for the whole time I have been—

Senator BIDEN. Mr. Chairman?

The CHAIRMAN. Yes?

Senator BIDEN. Excuse me for the interruption. I want to make clear the distinction I made between the summaries and the FBI file.

The CHAIRMAN. All right.

Senator BIDEN. We, this committee, does not accept summaries. Other committees do. And the reason we don't is we know they are incomplete. My only point is if someone really wanted to get information about someone, the place they wouldn't go—if they had no other place, they would go to the summary. But if they really want to go someplace, they would go to the raw file. That is the one that contains all the garbage. That is the one that contains all the uncorroborated stuff. So the summary would say basically that the next door neighbor doesn't like the person. The raw file would say I think he is on drugs because his dog comes and digs up my petunias. There is a difference. That is why we don't accept summaries in this committee.

The CHAIRMAN. Well, Senator Biden has also suggested that the White House discovered and volunteered the fact that 408 files were wrongfully acquired. This is not the case. The White House fought a House subpoena, and the White House did not disclose the

fact that there were improper requests until the FBI general counsel contacted the White House at the initial stages of his investigation on June 5th of this year.

But be that as it may, none of us looks forward to these kinds of hearings. To be honest with you, I don't either. But let's begin.

Our first panel of witnesses consists of private citizens whose names were on the list of FBI files wrongly obtained by the—

Senator LEAHY. Mr. Chairman?

The CHAIRMAN. Yes?

Senator LEAHY. Are we going to have any chance, any of the rest of us, to make any statement?

The CHAIRMAN. You can do that during the time that is allotted. We are going to allot at least 8 minutes for everybody on the committee. If we go to statements, we—

Senator LEAHY. We were told that there would be opening statements of 7 minutes each, Mr. Chairman.

The CHAIRMAN. No. Not by me you weren't. No, we have always handled it this way, as far as I recall, that the chairman and the ranking member make statements for the respective sides, and then we—if you want to make a statement, you will have time to be able to do so.

Senator SIMON. Mr. Chairman, if I could, and I am willing to let it be a 3-minute opening statement. I think we are dealing with something that is not of the usual character. And I think opening statements here are important—I would like to have an opening statement, I know, and if you want to make it 3 minutes, fine. But I think we are dealing with something that is serious here, and—

The CHAIRMAN. That is not an unreasonable request. Why don't we grant 3 minutes to everybody to make an opening statement? This is an important thing, and I want to make sure both sides have the full opportunity to express themselves, and we want to be fair to you.

Let's turn to Senator Thurmond for any comments he has to make. We are going to limit it to 3 minutes. Please, when you see the red light come on, let's stop.

STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA

Senator THURMOND. Mr. Chairman, I want to commend you for convening today's hearing to shed light on the troubling development recently uncovered at the White House. The American people have a right to know the details and intentions of requests from the Clinton administration to the FBI for sensitive background files on private citizens.

FBI Director Freeh has ordered new procedures to protect sensitive background material following disclosure of the Clinton the requests for FBI background files. Director Freeh has said that the White House had no justification for gathering these files and that the situation was an egregious violation of privacy. Director Freeh said that the requests from President Clinton's operatives in many instances "served no official purpose," and at one point he stated that the FBI had been victimized.

The White House has said that its collection of FBI files of private citizens was an innocent mistake. This is their response before

the facts are examined and seems to reflect an instinctual reaction by the White House anytime questions arise concerning their operations. The facts have yet to be fully examined, and it strikes me as premature and politically convenient to describe this situation as a bureaucratic snafu.

Initially, the White House would have us believe that Mr. Marceca was a random detailee from the Army who had been arbitrarily selected to work temporarily at the White House. We have since learned that Mr. Marceca—who, along with Mr. Livingstone, handled the sensitive files—is actually a seasoned Democrat political operative. They both have extensive political campaign experience. Mr. Marceca sought the post at the White House to work with his friend, Mr. Livingstone, and the White House wrote to the Secretary of Defense requesting his assignment.

Mr. Chairman, as you know, we are at this point because the White House only recently turned over documents pursuant to a long-ago subpoena from the House Oversight Committee. In fact, the White House has yet to fully comply with the congressional request for documents. Within the documents submitted, the House Oversight Committee found a White House request to the FBI for sensitive background files on Billy Ray Dale. The request for FBI background on Mr. Dale was dated 7 months after he had been wrongly fired as head of the White House travel office. It was only after this was discovered by the House Oversight Committee did the White House admit it had collected FBI reports on hundreds of private citizens.

Mr. Chairman, this is an important hearing because right now we have more questions than answers. The American people demand accountability. The American people want to know what right Clinton administration officials have to romp through sensitive FBI files of private citizens. This latest troubling development within the Clinton administration represents a dangerous practice and one that deserves careful scrutiny.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Thurmond.

We will turn to Senator Kennedy.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Thank you, Mr. Chairman.

I commend the chairman for convening the hearing so that we can get to the bottom of the incident. Serious questions about respect for the right to privacy are involved. The American people have a right to all the facts so that we can end the rampant speculation and guarantee that appropriate safeguards are in place for the future.

I understand that Attorney General Reno has today agreed that special prosecutor Kenneth Starr should conduct a full investigation. I commend the Attorney General for going the extra mile to reassure the American people about the facts in this case.

Privacy is one of the most basic American values, and when Government violates the privacy of its citizens, whether accidentally or intentionally, there is cause for great concern. It is ironic that this Republican Congress, which has been quick to undercut civil lib-

erties in other areas, has suddenly discovered the right to privacy in this situation. This uncharacteristic concern is obviously driven by the Presidential campaign politics.

I welcome the improvements in the White House security operation announced by Chief of Staff Panetta, including the appointment of a career law enforcement professional to oversee the Office of Personnel Security at the White House. Clearly, the privacy rights of several hundred individuals were violated in 1993 when the summary of their FBI files were forwarded to the White House. There is no evidence—no evidence—that this violation was malicious. Indeed, the only evidence clearly indicates that it was inadvertent. Only the files of individuals with last names beginning with the letters A through G were requested, which suggests that the incident was an honest error. But it is appropriate for this committee to make sure that nothing more was afoot.

In my view, partisan rhetoric and overheated comparisons between Watergate and the sloppy procedures surrounding these White House access lists are wholly irresponsible. The reasons Republicans are furiously fanning the flames of the FBI file flap is that they have nothing else to discuss in a campaign year. They don't want to talk about jobs. They don't want to talk about Medicare, education, the minimum wage, health care, the environment, or any other priority issue the American people care about. This hearing will tell us something about careless procedures, but it tells us much more about the sad state of the Republican Party in 1996.

The CHAIRMAN. Thank you, Senator Kennedy.

Senator SIMPSON?

Senator SIMPSON. Do you want to take someone else?

The CHAIRMAN. We are just going to go right in order. Senator Grassley.

STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. All I can say is here we go again, because this isn't the first major breach of security in the Clinton White House where private citizens were the victims. Incredibly, I have heard some say that this is no big deal because, as far as we know, nothing was released or it was just some sort of bureaucratic snafu.

Well, if it was just a mistake, it was effectively one just waiting to happen. When you put political hacks in charge of FBI files at the White House where interns and others without any clearance have access to the files, it is a disaster just waiting to happen. And anyone who didn't realize this is guilty at least of malfeasance. It is an incredible and truly unfortunate state of affairs that the Clinton White House has created, and I am sorry that the witnesses before us have to be before us today.

This, of course, is a sorry episode that every American should be concerned about, and I am personally offended since at least one of the persons on the infamous list is a former staffer of mine. The FBI says that it has now put in force new procedures so that these kinds of shenanigans can't happen again. I hope that is the case, but we will all have to wait and see, because I know that for the last 3 years the FBI has been a pushover for requests from the

White House when it came to providing personal information on private individuals whose politics differed with the White House. It will take some time before the FBI restores that reputation.

Again, besides Chairman Hatch, we all need to thank Chairman Clinger on the House side for his dogged pursuit of this issue. If he hadn't persevered, the White House would still be hiding these documents under the claim of executive privilege.

Now, we have heard that there is no evidence that any one individual has been harmed, nobody has been besmirched, but I say, yes, people have been harmed. They found that they can't trust their Government—the Government that promises protection of privacy. This is about personal lives of private individuals. There is no justification for this invasion of privacy whatsoever. Besides, you know, until recently, we all thought the FBI was some sacred institution in America, and I think most people still believe that. But it has been used—it has been used for political purposes, and it is impossible to justify the FBI doing that.

Where will it end? Who is safe? Well, we have got to make sure that it ends, and we have got to be sure that people are safe from political intrusion in their private lives.

The CHAIRMAN. Thank you, Senator.

We will go to Senator Leahy.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Thank you, Mr. Chairman.

I am concerned about the way the FBI background file matter is being pursued. I believe the Office of Inspector General at the Department of Justice would be the better choice for conducting the investigation. I think turning it over to Independent Prosecutor Starr is not the best way when you have the Office of Inspector General. Mr. Starr has been extremely partisan in his efforts so far, also extremely expensive in the millions and millions of dollars of taxpayer money he has spent. He has been partisan in his efforts. He has been partisan in his press relations. He has turned a blind eye to numerous obvious conflicts of interest in his own law practice. So I think the OIG would be better. I just mention that because of the situation we find ourselves in.

But I am more concerned about the manner in which we are proceeding today. There have been depositions or interviews of various individuals involved in this matter. My staff has not been invited to attend those sessions. I was handed the transcripts as opening statements began. Now, if these hearings are intended to be substantive and not merely a partisan show, the procedures we follow to prepare for these hearings must be conducted in a fair and thorough and bipartisan fashion, and they have not.

To have dueling hearings on both sides of the Capitol over the last 2 days, to proceed at breakneck speed before any members of any congressional committee have had the benefits of an opportunity to investigate and separate fact from fiction, I believe is ill-conceived. We could actually end up harming rather than protecting the private rights of citizens by our haste.

We have two models for investigative hearings in this Congress. One was the Ruby Ridge hearings. That was conducted by this

committee. They were thorough, they were bipartisan, they were substantive, and we took the time to do it right. They led to a report that made several constructive recommendations, and that report was endorsed virtually unanimously by Republicans and Democrats alike.

The other hearing was the so-called Whitewater hearing. It was extraordinarily expensive, it was bitter, it was partisan. The Whitewater Committee said they only wanted to demonstrate to the American people their own high ideals of ethics. Well, no one was fooled. They divided not only the members on that committee, but the Senate and many Americans. We should not head down that path.

What the White House is alleged to have done is stupid, and we all agree on that. But the rush to judgment of this committee smacks of partisan election-year politics. It does not have to be that way. We could have a thorough, bipartisan investigation of this without making it look like we are trying to get involved in Presidential elections.

[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF SENATOR PATRICK J. LEAHY

I am troubled by the allegations that have been circulated about the White House having poor, internal procedures for the protection of people's private files. On the merits, this should not be a partisan matter. Democrat and Republican, we should be concerned about the government doing a better job to protect the privacy of all Americans.

We need to improve our legal protections for individual privacy and our governmental processes providing access to personal and private information. On each occasion we need to ask whether the subject of the information ought be provided a right of informed consent before the release of such information. At each instance we need to ask why the government is requesting the information, for what purpose the information is needed, what use will be made of the information, what further disclosures of the information will be made, what will be done with the information after it is examined and whether the individual who is the subject of the information will be informed of the examination of the information.

Together we passed a law prohibiting the circulation of video rental lists after we discovered during the Bork confirmation hearing that they were generally available. I was glad to work along with many others here on that measure. Over the last several years, I have been pressing for privacy protection of personal medical information. In this and many other ways I am deeply troubled by unhindered government access to information about the personal lives of Americans.

I am also concerned however about the manner in which this matter regarding FBI background files is being pursued. First, the FBI released a report last week about its own role in mindlessly turning over summaries of its files on people who had access to the White House, without any effort to look at the privacy interests at stake. While this report, to its credit, strongly criticized the FBI's unquestioning deference to White House requests for FBI files, the fact remains that the FBI was intimately involved in this whole affair.

Some of us on this Committee sat through days of hearings last year about Ruby Ridge, in which significant questions were raised about the FBI investigating itself. The FBI's involvement in providing FBI files to the White House raises the same concerns about impartiality. I see this morning that the Attorney General plans to seek an expansion of the independent counsel's authority to look into this matter. While other components within the Justice Department, such as the Office of Inspector General, may have appropriately been called upon to investigate this matter, I appreciate the concerns that prompted this step.

Second, Mr. Chairman, I am concerned about the manner in which we are proceeding here today. I understand that your staff has been conducting depositions or interviews of various individuals who may have information about the FBI providing files to the White House. My staff has not been invited to attend those sessions, nor have I had an opportunity to review the transcripts of those interviews. If these hearings are intended to be substantive, and not merely a partisan show,

the procedures we follow to prepare for these hearings must be conducted in a fair, thorough and bipartisan manner.

To have dueling hearings on both sides of the Capitol over the last two days and to proceed at breakneck speed before the members of any congressional Committee have had the benefit of an opportunity to investigate and separate fact from fiction strikes me as ill-conceived.

I would note that we have two models for investigative hearings this Congress: The Ruby Ridge hearings conducted by this Committee were thorough, bipartisan and substantive. They led to a report that made several constructive recommendations and that was endorsed virtually unanimously. The so-called Whitewater hearings, by contrast, were bitter and partisan. They divided not only the members on that Committee but the Senate and many Americans. I hope that we are not headed down the latter path.

The CHAIRMAN. I would just like to correct one thing. Senator Biden's staff was with our staff and was invited to participate in every bit of this.

Senator LEAHY. Well, thank you very much, Mr. Chairman, but, again, we do—

Senator BIDEN. Some, Mr. Chairman, but not all of them.

The CHAIRMAN. Well, I mean, you were asked to participate. We are not going to have 40 staff members interviewing people. It is beyond—

Senator LEAHY. Mr. Chairman, I would note—

Senator BIDEN. We were not asked for all of them, Mr. Chairman.

Senator LEAHY. I would note that on Ruby Ridge, which went into questions of this administration and past administrations, we did it in time enough so that Republicans and Democrats alike could look at it, and that is why Republicans and Democrats supported the findings of that hearing.

The CHAIRMAN. Well, this isn't a year-long investigation. This isn't Ruby Ridge.

Senator Specter.

Senator LEAHY. Obviously.

The CHAIRMAN. We are moving ahead on this as quickly as we can. Or Senator Simpson, I am sorry. I skipped over Senator Simpson before. Could we take him first?

Senator SIMPSON. Well, I am glad I came. [Laughter.]

I have been on this committee for nearly 18 years, and I have seen some remarkable diversions from our course by Democrats and Republicans. I have seen dueling hearings. I have seen the October surprise, the DC surprise, the March surprise. You line them up, and we got them. Boy, and did we get them. Right during an election year, one after another, an interminable pile of hearings from those of the other faith. So I have been there. So maybe we ought to just stop right there on that one and just know that that is the way it is. And any of us that try to show the American public that that ain't the way it is is a total diversion from reality. That is the diversion.

But something is wrong here. At least, I thought of myself. When I get an FBI file—and I think Orrin Hatch and Joe Biden know so well—when we get a file, we have to have an FBI agent sitting there while we go through it. And this was just wholesale peddling. Every time I go through an FBI file, I have to do it in the presence of an agent, and so do everyone on this panel. And somewhere at the White House, they misfired in an extraordinarily—not just stu-

pid, but it violates all sense of what FBI files are about, at least to the American people. So I guess it is like that movie of the Sundance Kid and Butch Cassidy. My grandfather represented Butch Cassidy. The question is—

The CHAIRMAN. We thought so.

Senator SIMPSON [continuing]. Who are these guys?

Senator BIDEN. The question is: Did they jump holding hands off that cliff? That is the part I never understood. [Laughter.]

Senator SIMPSON. Well, he didn't die in Bolivia, Joe. I can tell you that. [Laughter.]

But the question is, Who are these guys? Who are these people, these low-level bureaucrats? They are not low-level bureaucrats. They were Democrat political operatives. That is going to come out. And I think it is something we need to probe, and we will, and that is why we are here.

But I misfired the other day myself. I quoted Shakespeare, and it wasn't Shakespeare who said it, but, boy, you don't want to miss what it said. It was Sir Walter Scott, and it was very simple: "Oh, what tangled web we weave when first we practice to deceive." And that is what this whole thing is—getting caught, covering up—and there is a time in this hearing before these people and before the Congress that you can do everything but lie. And for lying, you can go to the clink, and that is where this stuff is headed.

The CHAIRMAN. Senator Heflin.

STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. Well, I certainly feel that privacy is a right that needs to be fundamentally protected, and perhaps the hearings, regardless of facts and the party policy and partisan aspects, should give the American public a deeper appreciation of the right of privacy.

We realize that the FBI reports are necessary and that only authorized personnel should review them. We realize, I think, that in this instance people that work in the White House and who have access to the corridors moving back and forth could present a risk to high-level officials, including the President. So, therefore, there is a need for a background check on those individuals in regards to it. But there is no need in regards to those that do not have access or that are moving out or if there is any improper purpose.

I think Senator Biden pointed out the difference between a summary and a file, and it appears to me that if I was trying to dig up dirt on an individual, I would have to go to the big file. I would have a summary that would tell me something about it, but if I were going to use it for political purposes or use it to prove that I was right on somebody in the past, I would have to go to the big file and go through the details of it.

So I think we have to focus: Were there any big files? Did anybody go through the big files? And I think that is going to be a key relative to this issue that we ought to be concentrating on.

The CHAIRMAN. Senator Specter.

STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM THE STATE OF PENNSYLVANIA

Senator SPECTER. Thank you very much, Mr. Chairman.

I believe that it is indispensable that our committee conduct a comprehensive, nonpartisan, bipartisan inquiry without rushing to judgment and find the facts. This is a matter of obvious importance. When you talk about civil rights, civil liberties, and privacy, we are talking about the fundamentals of American democracy.

The tradition in our country for objecting to governmental excesses goes back to the founding of the country with our response to what was done by King George of England. We have had in our Nation's history governmental excesses, and there is a long line of concern as to what the FBI did under the administration of Director J. Edgar Hoover, and there have been concerns as to what the FBI has done in recent times focusing on Watergate.

What I think we need to do is to take a hard look at the facts, and I think it is a rather fundamental process. I believe we have to make a factual determination as to who in the White House made a request for the records and what the purpose was of that individual and whether that individual was under any specific instructions from a supervisor or superior and whether that supervisor was under any instructions from anyone else, and go right up the chain to see precisely who was involved in the request and to find out exactly what files were looked at and what the purpose was for looking at each file and follow the facts wherever they lead.

I think Senator Leahy's point is a very valid one in looking to the inquiry which the Subcommittee on Terrorism conducted on Ruby Ridge. This is the subcommittee which I chair. We took great pains to be sure that the full subcommittee was kept informed and that almost all of our decisions were unanimous. Senator Kohl was the ranking member, and we conducted that inquiry in a non-partisan or bipartisan manner. I think we got the facts. We had a report which was agreed to with only one, as I recall it, additional view having been rendered. I think we need to do that here.

It is true that it is an election year, but that is the year we are in. It is 1996. I would hope that we would move ahead and finish our inquiry very, very promptly. It would be a good inquiry to finish before we terminate in July so that we do not carry over into the fall, and do it as speedily as we can and as far removed from the Presidential election as we can. We don't have any choice about the time, but we ought to do it as fast as we can.

One point worth mentioning at this juncture is that the Intelligence Committee, which I now chair, made recommendations under the chairmanship of Senator DeConcini in 1994 to the White House when there was a request for a security review. The first recommendation made by the Intelligence Committee was that a Secret Service agent be assigned as a full-time Director of Security—that is the position which Mr. Livingstone apparently had—and that full-time director under the Intelligence Committee recommendation was to provide a nonpartisan overview of all security-related functions for the White House Office of Administration, including personnel matters. Considering what has happened here recently, we will be taking a look in the Intelligence Committee, at least as to that aspect of what happened.

But there is no doubt about the importance of privacy. There is no doubt about the fact that FBI reports and investigative files, which have all sorts of raw information—they do not make an evaluation as to what is true or correct—have raw leads, and thus require a very high priority of secrecy and confidentiality. There must not be a misuse. I think that this committee can do an appropriate, prompt, nonpartisan, judicious inquiry, and that is what I think we need to proceed to do.

The CHAIRMAN. Thank you, Senator Specter.
Senator Simon.

STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman.

I want to join in commending you for holding the hearings. We held hearings just recently in this room on Whitewater, and the basic question was: Was there an abuse of power by Bill Clinton either as Governor of Arkansas or President of the United States or by his administrations? And while we ended up with a very partisan kind of response from the committee, I think any objective observer would come to the conclusion there was not an abuse of power.

Here, however, we have an abuse of power. I am not suggesting it is by the President, but it is in the White House. And we should treat it very, very seriously. The history of nations is that governments find one excuse or another to abuse police powers. And our Constitution and Congress, we are part of the bulwark against the abuse of those police powers.

I differ with my colleague Senator Leahy. I think Attorney General Reno did the right thing in going to the court and saying give the special counsel jurisdiction here. And I would say to my friends in the White House, be completely forthcoming. Don't reluctantly put out the information. Let's find what is at the bottom of all this.

I agree with Senator Specter. We need a thorough, fair, bipartisan or nonpartisan hearing. We shouldn't trivialize this issue by getting it enmeshed in politics. And, Mr. Chairman, I think—and this is a tough one, but for you the question is, "Can we in an election year conduct fair oversight here?" I think it is extremely important that we bend over backwards not to trivialize this and to assure the American public we are taking this matter seriously.

The CHAIRMAN. I think that is a good comment, Senator Simon, and we will certainly work with everybody on this committee to do exactly that.

Senator Brown.

STATEMENT OF HON. HANK BROWN, A U.S. SENATOR FROM THE STATE OF COLORADO

Senator BROWN. Thank you, Mr. Chairman.

It seems to me this committee has a proper role looking at this matter. The privacy laws were passed in 1974 and transited through this committee in their markup. They were in reaction to the abuses of power by the Nixon administration and the violation then of people's right to privacy and, indeed, the misuse of FBI files.

So we had a long role, at least in this committee, of responsibility for this act, and I think it is appropriate to take a look at the act and see whether or not it is functioning as it should, and if changes are needed, look at those changes from a legislative point of view.

I am also concerned, as we come forward, to understand the reason for the dramatic increase in the request for files under this administration. I am advised that in addition to the files that are requested here that have received so much notoriety, the 380-some files or the 481 files, depending on which report you look at, that there has been a more than doubling of the number of files requested by this administration per year over files requested in the prior Bush administration. That dramatic increase, I think, should have our attention, and we should understand why that dramatic change, in addition.

Mr. Chairman, I think this ought to be conducted in a bipartisan way, and I hope that the White House will cooperate with the committee to get the facts out. That is what we ought to be interested in. I am concerned about the responses we have received thus far. Your letter of June 13 asked some very pertinent questions and received some answers that I think are fairly described as nonresponsive.

You asked for the committee who had authority to request FBI files. That is a logical question, and I think it deserves an answer. The White House answer basically dodged the question. They said, "We have not undertaken to determine the identity of all persons with authority to request" FBI files. In other words, we are not going to get an answer. They go on to name some people who had involvement, but basically they didn't answer the question. It is a logical question, and it ought to be answered.

You asked who had custody of the files requested. That is a reasonable question in this case. It basically got a nonanswer. They said, "To the extent we have information responsive to your question about the requests for and the chain of custody of any of the mistakenly obtained * * * reports, please see"—and they list some other people's statements. That was a nonanswer, though, in terms of being responsive.

Third, Mr. Chairman, you asked what information from the FBI files on the seven employees was disseminated by the White House. Now, that is an appropriate question because the question is whether or not this information was used to disseminate information in violation of the law. The answer to that question was basically a nonanswer, a nonresponse: "We have no information responsive to your question about requests from FBI reports on Members of Congress or their staffs." That really was in answer to the question about whether they had requested files on Members of Congress. That is a nonresponsive answer.

So, Mr. Chairman, what we have run into is a stonewalling by the White House. I think it is in their interest to get the answers out, to get the information made public. If it is an honest mistake, I am sure everyone will understand, but we want to see corrected answers. But refusing to answer the questions is not adequate.

Last, Mr. Chairman, let me simply say this. As a Republican who is outraged by Richard Nixon's activity and thought it appropriate that he leave the White House, I listened with distress to the com-

ments by the Senator from Massachusetts earlier this morning. His questioning of my motives and other members of this committee is inaccurate and it is unfair. Frankly, I for one member think the laws ought to apply to both Democrats and Republicans in a bipartisan way, without regard to party.

The CHAIRMAN. Thank you, Senator.

Senator Feinstein.

**STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR
FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Mr. Chairman, when I first came to Washington, and particularly to this committee, and especially as a nonlawyer, and learned that the gathering of FBI data on a judicial appointment was much as Senator Biden has suggested—somebody goes out and asks neighbors and acquaintances what do you know about this person, and then this goes into a file—you come to really understand what an FBI file is and that it can be wrong and that it can be potentially very damaging to the individual. Therefore, handling those files with great discretion and care and privacy is important. I think Senator Simon set the record very well straight in that regard.

I think for the people, at least those from California that have contacted me, the question I am asked is: "Were the files an enemies' list or were they really appropriate to the running of the White House?" I want to just quickly state what I know up to this point and the questions I am going to ask.

First, as far as anyone knows at this point, the background files, as I understand it, went directly to the safe in the White House security office. They were never requested by anyone. I want to see if that is true or false.

Second, most of the names on the list are really of low-level White House staffers. There are only less than a half a dozen well-known names, to my understanding.

Third, I am told the Bush administration removed an archived all FBI files it had collected and maintained on individuals who had access to the White House during that administration.

Next, I am told in mid-1993 the Clinton White House security office undertook to re-create FBI background files for, No. 1, White House employees held over from the Bush administration, and, No. 2, nonemployees who required continued access to White House grounds in order to conduct business with the White House. And I think we need to verify that.

I am also told that this is a standard procedure that has been conducted at all White House transitions.

Now, according to the White House, we are also told that the computer program used by the Secret Service to track access to the White House was flawed, causing the Secret Service to send Marceca a list that was overly broad. The Secret Service may have inadvertently sent Marceca names of individuals on inactive status as well as those on active status.

We know that a White House security staff member who took over the project for Mr. Marceca after his detail ended realized that the list Marceca had received from the Secret Service was overly

broad, and that staff member sent 350 extra FBI files directly to the safe at the White House archives. According to the White House, this employee realized the error after the Secret Service had corrected its procedures.

Now, we know the independent counsel and the FBI are investigating the issue. The White House and the FBI have apologized for the incident. The White House has placed one employee on administrative leave, and a long-time security expert has been put in charge of White House security operations. We know the FBI has apologized for its longstanding deference to White House requests for information. A strong statement was made and then a second statement clarified the earlier statement.

I am told the FBI and the White House have instituted the following new procedures as a result of this incident:

First, all White House requests for files must be accompanied either by the consent of the file subject or White House letter to the FBI general counsel explaining why such consent cannot be obtained. The White House request for FBI files must now contain the actual signature of the official requesting the material. Officials must certify that the information is sought only for official purposes. And White House requests for information will be reviewed by higher-level rather than lower-level FBI personnel.

I think thus far, if this is correct, it is a stretch to think that this routine request was anything nefarious, and I think we need to ascertain from individuals testifying do they have any evidence that the files were used against them or were requested by anyone for any kind of unauthorized use.

I thank the Chair.

The CHAIRMAN. Thank you, Senator.

Let's keep our comments to 3 minutes. They will slip a sheet in front of you that your time is up, and we hope you can bring it to a conclusion.

Senator Thompson.

STATEMENT OF HON. FRED THOMPSON, A U.S. SENATOR FROM THE STATE OF TENNESSEE

Senator THOMPSON. Thank you, Mr. Chairman.

Mr. Chairman, I think the broader issue that we are dealing with here is the fact that there has been historically a consistent tendency by the White House to abuse and use the FBI. It goes back at least through the Roosevelt administration. The one we are most familiar with is the Nixon administration. It has been consistent and it has been bipartisan. It seems to be the nature of the animal. The FBI has information and knowledge, and that is powerful. The White House always seems to want it.

That is what we are dealing with here. The question is whether or not it is a lower level or higher level, and we will get to that. I agree with those that say we should wait to make those determinations.

But, you know, I am struck by some of the comments made earlier this morning. Some pretty heated partisan comments were made earlier and some references to Watergate. I have resisted the temptation to talk about Watergate because in most cases it is not

appropriate. But I will talk about that for a minute because I was there.

In the first place, I think it is somewhat ironic that if we don't have a Watergate now in any investigation, the investigation is somehow not worthwhile—failing to realize that that was a unique set of circumstances where we had evidence, that is, tapes, which definitively answered all the questions. We had a resolution, unlike almost any trial, unlike almost any hearing, we had definitive resolutions to all questions, and a President was deposed. That situation had never happened before and probably will never happen again. These other investigations cannot be expected to live up to that.

Another point I would like to make: Before we start dividing ourselves up into Democrats and Republicans on this issue, before Republicans start convicting people before the facts are in, before Democrats start circling the wagons and defending the President at all costs, I would like to remind everybody that it doesn't have to be that way. On the Watergate committee there was a unanimous vote, Democrats and Republicans, when it came time to issue the crucial subpoenas. There was a unanimous vote when it came time to give immunity to John Dean even though it jeopardized his subsequent prosecution in many people's eyes, and the special prosecutor at that time was begging us not to do so. But Democrats and Republicans went ahead and did so.

There was a unanimous decision by Democrats and Republicans in that committee to sue the President of the United States, Richard Nixon. I signed the pleadings as minority counsel on that committee.

So this is different. Watergate is different. This particular inquiry is different. Iran-Contra was different from Ruby Ridge and things of that nature, because these matters have to do with the White House. It is very sensitive, and partisan in nature. That is why we divide up these committees according to Democrats and Republicans, is my understanding. There are some legitimate partisan considerations that we have with regard to these matters.

So it is very touchy, and it requires more of us as Senators and individuals to be reasonable and to be bipartisan because of the sensitive nature of it. So let's not try to divide up too quickly.

Certainly it is inappropriate to compare a beginning of any inquiry with the resolution of another inquiry, which took months and months and months of hearings. We get the factual result of that, and after the first day, people want to start making comparisons at the front end of one inquiry with the back end of another. It can't be done.

I must say that I am struck sitting here back almost to the month in 1973 over in the Russell Building. We had a gentleman by the name of Patrick Gray, Director of the FBI, testify before us, and he said that, yes, he gave files to John Dean because he was the counselor to the President. And as I read this FBI report here that says, with regard to the current inquiry, that obviously considerable deference was shown by the FBI to the White House over a period of time. The difference is that at least back in those days apparently the White House counsel and the Director of the FBI were dealing with each other and supplying this information, and

now it looks like that the lowest levels of both entities nowadays trade this information back and forth.

I am struck by the fact that the White House used a ruse to get information on Daniel Schorr from the FBI under the guise of giving him a job. We know what happened to Mr. Billy Dale and the ruse that was used to get FBI information on him because they said that he needed access to the White House.

Back then we went to the wall on executive privilege and sued the President of the United States because he was claiming executive privilege with regard to documents and tapes. Now I read in the paper where apparently the President is still claiming executive privilege with regard to documents and information that he says, on the other hand, that he never knew anything about, which is clearly inappropriate.

So we will see, but I think those who say that we clearly have another Watergate are wrong and premature. But those who say that it can't be anything like that and that we should accept the explanation of stupid and incompetence, the defense of stupidity and incompetence can only go so far.

I remember back in the old days it was a third-rate burglary carried out by a bunch of idiots, so we should have dropped that right then and there.

So I think, again, Mr. Chairman—I know that you have indulged me somewhat here, but I think both parties and both sides in this would be well advised to just try to shoot it down the middle. Let's don't try to make something out of it that it is not. But let's don't blind ourselves and be so defensive that we don't see clearly what is before us.

The CHAIRMAN. Thank you, Senator.

Senator Feingold.

STATEMENT OF HON. RUSSELL D. FEINGOLD, A U.S. SENATOR FROM THE STATE OF WISCONSIN

Senator FEINGOLD. Thank you, Mr. Chairman, especially for your patience. I will be very brief.

I obviously just want to add my voice that there are very serious concerns here. The events raise questions not only about the process for obtaining FBI files, but also the apparent absence of oversight of the process, but at the most basic level, as almost everyone has indicated, is that the issue before the committee has to do with our fundamental rights as Americans to remain free from unjustified intrusions into our private lives.

I will reserve judgment on the motivations of those involved until we have sufficient evidence to reach a conclusion, but it is imperative that the underlying problem not be obscured in political rhetoric from either side. And that problem is that procedures in place for a number of years were woefully insufficient to prohibit what has been characterized by the FBI report as nothing less than "an egregious violation of privacy."

This is unacceptable, and our efforts must be guided by the notion that this type of incident can't happen again. Both the FBI and the White House have an obligation to uphold the privacy of the American people, and the ramifications of either failing to do so are profound.

While both the FBI and the White House have stated their intention to reform the current system, I don't think a simple change in process will be sufficient. In order for the privacy issues raised by this incident to be avoided in the future, it will require the continuing oversight of top-level officials in both the White House and the FBI, and nothing less will do.

So, Mr. Chairman, it is my hope that through this hearing and the continuing review of this matter that privacy concerns will be given the attention and priority they deserve and should have received from the outset. So in the final analysis, I want to just finish by saying, Mr. Chairman, that fundamental rights must never give way to bureaucratic expedience, as they seemingly have done in this case.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Senator Kyl.

STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator KYL. Thank you, Mr. Chairman.

I think the challenge before us was put especially well by Senator Simon, by Senator Thompson just now, and by Senator Feingold, that this hearing demands the best of us. And it won't be easy. Clearly politics intrudes. Republicans will tend to want to be more aggressive in the pursuit of this. Some Democrats perhaps will want to give some excuses. I understand that. We need to rise above it.

One thing I do not understand, however, is the suggestion by some that the information in the files, if it was not made public or used against these people in any way, that therefore there was no harm; and if there is no harm, there is no foul. It is like saying that unwanted sexual advances in a workplace are no big deal as long as the employee doesn't get fired or demoted. That is outrageous. It is wrong. And I think that that is not an excuse that anybody ought to offer in this particular situation. I am astonished that some would downplay the invasion of this privacy in that way.

I think we could at least all agree on one thing, and that is that whether this was merely a mistake or was, in fact, intentional—whichever it was—that there was egregious damage to the people whose files were reviewed. I would hope we could at least agree with that.

Senator Biden made a good point. He said we ought to keep our eye on the ball. I want to do that by just suggesting that there are at least 10 questions that we ought to get the answers to, in addition to the questions that Senator Specter asked about who ordered that the files be reviewed and why.

No. 1, who hired Livingstone, and why was he hired? Who in the White House discussed it, and what was discussed about why he rather than a professional should be hired? Why would political operatives rather than professionals be put in charge of this most sensitive job? Was it merely a coincidence that people who are described in the media as political dirt diggers were put in charge of this sensitive operation?

What activities did Livingstone and Marceca actually perform in the Democratic campaigns in which they worked of Messrs. McGovern and Muskie and Hart and Gore and Clinton and others? Were they, in fact, political dirt diggers, as reported? Did Livingstone, in fact, infiltrate the Quayle campaign, as he claims, in order to get intelligence on Dan Quayle?

Who gave Livingstone instructions, and who knew of those instructions? How high up were the people who knew of the instructions? What were those instructions? Did anyone in the White House ever become aware of any of the information from the files?

Finally, this information only came to light, we know, because of the House committee's threat to issue a subpoena. There are 3,000 pages of documents that were being withheld. This information came to light because it was included in 1,000 pages that were finally released under threat of subpoena. What about the other 2,000 pages? When are those pages going to be released, and what will they show?

Why, when the problem was discovered, didn't the White House come forward? Would this coverup have continued except for the information that the House committee obtained?

And, finally, why hasn't Mr. Livingstone been fired? Where is the outrage? I note that President Clinton in regard to the State Department issue at the beginning of his campaign said if I catch anybody using the State Department like that when I am President, I will fire them the next day.

It seems to me that the Washington Post has it right when they said, and I am quoting—and I will conclude—"The last people in Government to have access to, let alone be custodians of, sensitive background information, reports, and materials should be political operatives." That unfortunately is what the Clinton administration seems to have done, and that is just for starters. And they conclude by saying, "It needs to be established clearly who was responsible for this. It is not good enough for people in the White House to simply profess that they are outraged, too."

The CHAIRMAN. Thank you, Senator.

Senator Kohl has indicated that he would like to pass.

Senator KOHL. I have a statement I will insert in the record. Thank you.

The CHAIRMAN. All right. We will be happy to put it in the record.

[The prepared statement of Senator Kohl follows:]

PREPARED STATEMENT OF SENATOR HERBERT KOHL

Mr. Chairman, while I know you sincerely believe that this matter requires a Senate investigation, I am concerned that we are moving forward in a partisan way that may undermine what we ultimately accomplish.

It is my understanding that, with the partial exception of Senator Biden, no Democrats on the Judiciary Committee have been present for witness interviews, helped select any witnesses, received any relevant documents from the Majority until very late in the game, or been involved in this investigation in any significant way. For example, my office only received transcripts of many witness interviews this morning. Now, as we learned during Ruby Ridge—where we had a single unified non-partisan investigative staff—the quality of an investigation can often be judged by the extent to which it proceeds in a bipartisan manner; in other words, a bipartisan effort more effectively fosters public confidence. And particularly during this election year, we must ensure that the Senate Judiciary Committee's work has the full faith of the public.

I am also troubled by the fact that numerous Majority staffers have been moved away from their legislative tasks—important legislative tasks—to work on quickly putting together this hearing. This particularly concerns me in the context of Economic Espionage legislation that I introduced along with Senator Specter. I understand that fine-tuning the measure has been delayed because staffers have been directed to work on the FBI files investigation.

In closing, I hope that as this investigative process moves forward it will do so in a more bipartisan manner, so that all of us here on the Committee—and the public we represent—can have faith that we have uncovered the truth.

The CHAIRMAN. Senator DeWine.

**STATEMENT OF HON. MIKE DeWINE, A U.S. SENATOR FROM
THE STATE OF OHIO**

Senator DEWINE. Thank you, Mr. Chairman.

As we begin these hearings, I think it is clear that there are some things that we know and some things that we don't know. It has been stated very eloquently before that the ultimate question is who asked for the files and why did they ask for them and how far up the chain of command did this responsibility go. Does it stop at Livingstone or does it go above him?

These are questions we don't know. These are questions I think the American people clearly have the right to know.

There are several things that we do know. We do know that Craig Livingstone was probably the last person that should have been head of the personnel security in the White House. And I think that one thing that will come out of this is—I hope—that no administration, Republican or Democrat, in the future will ever put a political operative in this very sensitive position, will ever put someone in this position whose sole qualification has been that he has been a good advance person and that he has worked on four or five or six or seven political campaign?

Finally, Mr. Chairman, there is something else I think that we know. I have read the report and the recommendations by the FBI as far as the changes of procedure, and I think those are good. They are correct. But I don't think that we should kid ourselves. There is always going to be a way to game the system. Senator Thompson said it very well. This has been a problem for decades, that the FBI, because of its nature, when they do their job, has very, very sensitive information. This asset, this sensitive information, is something that Presidents and White Houses are very tempted to try to get at. So you can set up any procedure you want to, and we should, and we should make it as tough as possible and make people accountable.

But, frankly, there is no substitute for having good people in the right positions. There is no substitute for having someone who heads up this personnel office, having someone who is sensitive to civil rights, sensitive to civil liberties, and sensitive to the Constitution.

Thank you very much.

The CHAIRMAN. Thank you, Senator.

Senator Abraham, you will be our last one.

**STATEMENT OF HON. SPENCER ABRAHAM, A U.S. SENATOR
FROM THE STATE OF MICHIGAN**

Senator ABRAHAM. Thank you, Mr. Chairman.

I sort of want to follow up where the Senator from Ohio just was focused. At the beginning today, it was pointed out by Senator Biden that Members of the Senate themselves frequently don't quite understand when they get here how to handle FBI files or that there had been incidents in the past where perhaps they had been quoting from them inappropriately. And that may be true. The one thing I have been struck by, though, in the way this Judiciary Committee has functioned—and we went through a transition of our own to a new chairman at the beginning of last year—was the fact that the staff who was in charge of those FBI files has operated, in my judgment, with the highest degree of capability and security and consciousness of privacy. And it seems to me that what we should expect at all levels of Government is that level of performance. There has not been any, to my knowledge, accusations or criticisms whatsoever of the way the staff here has dealt with it, the way that transition was handled, and I would assume—at least we would all expect that to be the case in every department and agency and certainly at the White House.

Yet that has not been the case and was not the case at the White House, at least for a fairly lengthy period of time. Clearly there are one of two possible explanations for what occurred: first, that there was some malicious intent involved in the securing of these files; the other that it was simply gross negligence. And I think the one thing that will become evident as this goes forward is that, at the very least, it was gross negligence—gross negligence with respect to the privacy and the security in the White House itself. And it seems to me that leads to further questions if, in fact, that was the case. But if it is more than that, then it leads to a separate set of questions, and that is obviously part of our objective here.

But the one thing I would just hope is that we do not get diverted by matters that I don't really believe are valid questions here. The size of the file that was requested on the people we are going to hear from today should not really be an issue, Mr. Chairman. The fact is I don't think any of these witnesses we are going to hear from is particularly made happy by the fact that they only had the thin file versus the thick file. They still have privacy rights that were invaded.

I also don't think we should take any particular comfort in the fact that very recently or maybe in the very near future changes in the process are going to occur at the White House in the way these matters are handled. The fact is that apparently these problems were discovered years ago and no changes in the process ensued at that point. The only reason we have changes in the process apparently now is because it has come to light, and only then because of the subpoenas that were brought about by the House that finally revealed the extent to which this has happened.

So let's not get diverted with those issues, Mr. Chairman. Let's just ask ourselves how any of us would feel here if we discovered that our FBI file or summary was somehow in the possession of folks who had spent much of their career involved in very partisan political activities. Obviously we would be deeply concerned.

Senator Grassley has mentioned the fact that a former staffer of his is, indeed, one of the people whose files were part of this problem. I have got an even more direct situation. One of my own cur-

rent staffer's file is involved, and I know how she feels. And I don't think it should matter whether or not the employees were high-level or low-level employees at the White House. I think the purpose, the primary purpose of this set of hearings ought to be not only to discover exactly what occurred, but to make it absolutely clear to the American people that we here in the Senate don't think it should be tolerated. I certainly don't think so, and I hope that when this process is over we make it abundantly clear that it is not going to be tolerated in the future.

Thank you.

The CHAIRMAN. Thank you, Senator.

Now I think these opening statements have been critical at the beginning of this, but let it be known by everybody on the committee there are going to be two statements from here on in. We are now 1½ hours into the hearings, and from here on out, the two statements are going to be by the chairman and the ranking member, and then other statements will have to be made during the time allotted. Otherwise, we just can't move ahead as well as we can. But this was important. I agreed with it because it is the beginning day of hearings, and we probably will have more hearings, hopefully in an expeditious way and hopefully on a bipartisan basis. And we will do everything in our power to do that.

It is easy to see why people are outraged. Both sides agree there are some terrible mistakes here. The question is just what is the extent of these mistakes, and I think we have to get into them.

Our first panel of witnesses consists of private citizens whose names were on the list of FBI files wrongly obtained by the White House. Each of them was proud to have served in the White House, and each of them had left the White House before their files were requested. Each of them is understandably concerned about the invasions of their privacy involved in the handling of their confidential files.

In addition to these witnesses who will appear before us today, I have received correspondence from other individuals whose FBI files were also similarly wrongly obtained. So without objection, we will put this correspondence in the record, and I will leave the record open for 2 weeks for any further correspondence that anyone cares to send to us or that arrives.

[The letter follows:]

ALEXANDRIA, VA, June 24, 1996.

Hon. ORRIN G. HATCH,
U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: In watching the first session of the Senate Judiciary Committee's hearings on the White House's improper acquisition of former passholders' FBI files, including mine, I was outraged at the reaction by some senators who basically said "no harm, no foul."

If a burglar breaks into my home but leaves without taking anything, has he not committed a crime? If a mugger asks for my wallet, but only gets \$5, is there no crime? If my right to privacy is invaded, but no one knows, is it not a breach?

The travesty of someone reading my file will not end when the hearings end. The threat of some one using any information in that file—whether true or untrue—will be a risk for many years to come.

Therefore, I found it incredulous when I hear Senators, especially Members of the Judiciary Committee, try to make that case.

When I first learned my name was on the list of those whose files the White House retrieved and reviewed, I was amused. But that cavalier reaction quickly faded when I realized the ramifications of the action. I left the employment of the

White House in 1989. My pass was immediately voided. There is no way I was on the employment roles in 1993 when this list apparently was created. There is no way I was a holdover in the Clinton Administration.

I have never read my file, though I just requested a copy from the FBI so I, too, can learn what might have been so interesting to the White House.

It seems impossible, especially in a presidential election year, to complain about such a violation of my rights without it sounding as if partisan politics is the motivation. That is not my motivation. If, however, the fallout of this "snafu" has political ramifications, so be it. The White House will have brought that upon itself.

For me, I want some answer. Many of the questions I have are already being asked by Members of Congress, by the media and by others. I, too, of course, want to know how and why this particular list was created, and answers to many other "process" questions that I know your committee is pursuing. On a more personal level, I want answers to the following questions:

- (1) Who read my file?
- (2) Were copies made?
- (3) Was any information from my file given or told to anyone? (It doesn't matter if the "anyone" worked within the White House—no one had a right to that information.)
- (4) Who had access to my file while it was in the White House? I understand from news stories and testimony that teenage interns likely had access to these files.

In Watergate, the investigation began to achieve success when someone suggested "follow the money trail." In my case, the ramifications of unauthorized people looking at my background file may reach years into the future. Some one who picked up a tidbit by reading it—true or untrue—many choose to "unveil" it years from now, maybe as it relates to something going on in my life or my children's or grandchildren's. The reach of this breach is long.

Therefore, I ask that you pursue the "follow the access" trail. I would like as complete an accounting as possible of all those who might have read my file so I can prepare for whatever may come into my life long after the politics of this issue has died down, long after the partisan posturing ends, long after the final reports are written and, frankly, long after the Judiciary Committee's interest has waned. This, literally, is my life that has been violated.

Some senators are asking at the hearings, what harm has been done? My answer to that is, I have no idea, and I may not know for years after this investigation ends. Which is why I want the answers now, while the trail and the interest are warm.

This is one of those events in my life that the more I think about it, the longer answers are not available and the angrier I get. The bemusement of a couple of weeks ago is long past, and the anger and helplessness now settles in.

Some senators indicated that apologies have been made, reorganization of the personnel security office has taken place * * * and that seems to, in their minds, end it. It does not. And the reason is not because there is an election in November, the reason is because someone has violated my rights.

If some senators on either side of the aisle want to make political speeches over this—that's their business. If political posturing is the best they can hope to accomplish, then I will let them deal with that. For me, I want to know who was involved in this at the White House, why my file was obtained and who read it.

I appreciate your efforts on this, and I look forward to getting answers to the questions I have asked.

Thank you for your time.

Sincerely,

B. JAY COOPER.

The CHAIRMAN. Ellen Gober will be our first witness. She is an executive assistant at an investment banking firm. She served in the White House as staff assistant in 1991 and 1992.

Graven Craig is a law student who will begin his third year next fall at George Mason University Law School. His primary contact with the White House was that he was an intern for 4 months in 1991. He subsequently worked as an aide to the treasurer for the 1992 Bush campaign. He was on his honeymoon last week when the news of the improperly held FBI files broke.

Billy Dale worked in the White House travel office for 32 years, serving as Director from 1982 until 1993. On May 19, 1993, he and

six other employees were fired from the office by the White House. He was subsequently tried and acquitted of charges of embezzlement. The White House obtained Mr. Dale's FBI file 7 months after his dismissal.

Anita McBride has most recently worked as a management consultant. She served in the White House twice: once from late 1984 until 1986 in the correspondence office, and she returned in mid-1987 as Director of the White House Personnel where she served until mid-1992. She also helped on President Bush's transition to private citizen status for 6 months in 1993.

Our final witness on this panel is Mary Carroll. Mary is a home-maker and a mother of two. She served in the White House as Assistant Director of White House Personnel from May 1989 to August 1993.

We would like you to keep your remarks within 5 minutes, shorter if you can, so that we can allow enough time for questions, and we will start with you, Ms. Gober, and go right across the table.

PANEL CONSISTING OF ELLEN JANYCE GOBER, WASHINGTON, DC; GRAVEN WINSLOW CRAIG, ALEXANDRIA, VA; BILLY RAY DALE, CLINTON, MD; ANITA BEVACQUA McBRIDE, WASHINGTON, DC; AND MARY KATE DOWNHAM CARROLL, ALEXANDRIA, VA

TESTIMONY OF ELLEN JANYCE GOBER

Ms. GOBER. Good morning, Chairman Hatch and members of the committee. My name is Ellen Gober, and I want to thank you for this opportunity to speak to you this morning.

From September 1991 until December 1992, I was a staff assistant in the Office of Legislative Affairs in the White House. Our office served as the principal communications link between the White House and Capitol Hill. To this day, I view that job as one of the most challenging, exciting, and rewarding experiences of my life.

The CHAIRMAN. Excuse me. Can I just interrupt you for a second? I forgot to swear you in. I think we will swear witnesses during these proceedings. If you will all stand and raise your right hands, do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Ms. GOBER. I do.

Mr. CRAIG. I do.

Mr. DALE. I do.

Ms. McBRIDE. I do.

Ms. CARROLL. I do.

The CHAIRMAN. Thank you. I am sorry to interrupt you.

Ms. GOBER. Like most of my colleagues, I worked long hours, but I always felt a deep sense of pride and honor about trying to improve people's lives by serving in that special institution known as the White House.

I would be less than candid, however, if I did not tell you that the recent revelations about the Clinton White House's unauthorized search of my FBI background file has soured an otherwise positive experience in Washington and shaken my confidence in our Government. As a young person with a lifelong interest in politics and government, that is the tragedy of my story.

I am from a small town in Texas between Houston and Dallas called Corsicana. My father served as mayor from 1979 until 1981, so you might say that government service runs in the family. Growing up in grade school and continuing through my graduation from college, I was taught that patriotism, love of your country, and service to my community were among the most important values in life. That is why when I graduated from college and had the opportunity to work for my hometown Congressman, Joe Barton, I jumped at it.

Later, when Gary Andres, who was then Deputy Assistant to the President for Legislative Affairs, asked if I would join his staff at the White House, I thought I had reached the pinnacle of my short career here.

Part of securing a position on the White House staff meant receiving an FBI clearance. I wasn't sure what was involved with the clearance process. I have to admit I was a bit intimidated. Yet two things about the FBI investigation raised my confidence. First, everyone had to do it. It was White House policy. So I wasn't the only one subjected to strangers asking personal, private, and often embarrassing questions about my past to my friends, relatives, and neighbors. Not that I had anything to hide, mind you.

But I understood that. This was the White House, after all. The second factor that comforted me was the assurance I received that the results of this FBI clearance would remain strictly confidential. To my knowledge, no one except for the White House personnel security office could see my file—not me, not my boss, and not even his boss.

Needless to say, I was shocked and alarmed when my mother called me after reading my name in USA Today and discovered it among those files requested by the Clinton White House. My mother was worried I had done something wrong. So not only do I feel that my privacy has been violated, my reputation had been questioned as well. Family and friends back home in Texas have been led to believe that I had done something wrong. In truth, all I wanted to do was serve in the Presidency.

That is why this is so troubling. The Clinton White House requested my file without justification or without my knowledge. Why did they need to see it? Who saw it? How many copies were made? Where did the information go? Those are just a few of the questions I ask myself every day when I pick up the newspaper or watch the news.

Until recently, I didn't believe my Government would lie to me. I trusted the system because of the way I was raised and because of the way I saw it work in Congressman Barton's office and at the White House.

Maybe a lesson I should learn from this is that Government institutions are only as good as the people who serve in them. Instead of feeling anger towards the system, I am here to express my anger towards the people in the system who have shattered my trust.

My personal privacy has been violated. I feel betrayed by the Government that I trusted with my most personal information in order to ensure the integrity of the Presidency. I was honest to them, and they let me down.

In closing, I feel at a time when we need more and more young people to join in the political process and participate in Government service, I wonder how many will turn away because of stories like this one that you have heard today.

Thank you for the time to tell my story.

The CHAIRMAN. Thank you.

Mr. Craig.

TESTIMONY OF GRAVEN W. CRAIG

Mr. CRAIG. Thank you, Mr. Chairman, Senators.

My name is Graven Craig. I grew up in Charlottesville, VA, with a deep respect for Government and the home of Thomas Jefferson.

I came up here to serve after college, and I was able to ascertain a job in the Office of Public Liaison as an intern for the Deputy Assistant to the President Bobbie Kilberg and Special Assistant Leigh Ann Metzger. I served there for 4 months, from August 1991 or September 1991 through the end of December.

Then I took a job on the Bush-Quayle 1992 Committee and was asked to stay on at the end of the campaign to work on the audit. I was there until August 1994. I then was accepted to law school, and that is where I have been since.

As the chairman mentioned earlier, I found out about this on Monday this week because the Saturday before, I was married to my lovely wife, Kelly Craig. We were on our honeymoon in Barbados, and obviously I didn't have a chance to read an American newspaper. So suffice it to say I was thoroughly shocked on Monday morning when somebody called me to ask me about how I felt about my FBI file being accessed. I was deeply concerned, to say the least, because I had no idea what they were talking about. And I got off the phone and had to ask somebody in the office if they knew anything about this.

Once I figured it all out, I was fairly outraged and deeply concerned about what was going on. It is inconceivable to me that anybody in a subsequent White House would have any need to read an intern's file, whether it be a summary, whether it be a raw file, or anything. It is unbelievable.

My only question that I have—or I have several questions still left, and that is: Who viewed my file? What did they read? What they did photocopy? What did they transcribe? And how long have they had it in their possession?

Last, I can't really say how I was harmed in terms of quantifiable figures. It is just that I have a deep concern for this kind of egregious breach of confidentiality.

Thank you for giving me the opportunity to speak.

[The prepared statement of Mr. Craig follows:]

PREPARED STATEMENT OF GRAVEN W. CRAIG

My name is Graven Craig. I am here today to testify about my confidential FBI file that was accessed sometime between December, 1992 and February, 1994 by the Clinton administration.

During the Fall of 1991, I was an intern in the Office of Public Liaison at the White House. I worked under Bobbie Kilberg, who was a Deputy Assistant to the President for Public Liaison, and Leigh Ann Metzger, who was a Special Assistant to the President for Public Liaison. My duties mainly consisted of helping her to prepare White House events, briefings and constituent group requests.

In January of 1992 I was fortunate enough to gain a paid position of the Bush-Quayle '92 Committee as the Aide to the Treasurer of the campaign and worked there until August 1994. I then entered law school and that is what I have been doing for the last two years.

On June 8, 1996, I was married to Kelly Margaret Thorn, now Kelly Thorn Craig. On June 9, we left for a week long honeymoon in Barbados. While on our honeymoon, neither of us had an opportunity to read any American newspapers and knew nothing of the events involving this matter. When we came home from our trip I returned to work.

Monday afternoon, before my parents had had an opportunity to tell me my name was in the paper, I called home to check my messages and received one from the Senate Judiciary Committee. I was informed that I was involved in some sort of FBI file matter and that I needed to call back. Needless to say, without having any common knowledge of last week's events, I was extremely concerned and confused. After my initial shock subsided, I returned the call. I was asked how I felt about the Clinton White House accessing my confidential FBI personnel file. I told them I did not know what they were talking about. After I got off of the telephone I asked someone in my office if they knew anything about the accessed FBI files at the White House, only then did I find out about the previous weeks news events.

It was at this point that I finally understood what was going on. My immediate reaction was anger and rage. I then began to wonder why anyone in the Clinton Administration would want to access my confidential file.

My initial reaction is how inconceivable it is to me that a subsequent administration would have access to the previous administration's confidential FBI personnel files. When I provided the information necessary to complete my file, I never contemplated that anyone other than appropriate FBI officials would have access to it. I was under the impression that only peoples in the Bush administration could view this file. Suffice it to say that I am deeply concerned that my file was so easily accessible by non-FBI officials.

I did not have a top level position in the Bush administration. And I have been in law school since I left the campaign. I therefore find it incredible that anyone would have a need to review my confidential file.

I am also very concerned about who has viewed my file, how long they may have had it in their possession and what contents from it would have been photocopied or transcribed. It certainly is not that I have anything to hide, it is that I am very concerned about this large breach of confidentiality that has taken place. I do not know what is in my file. No one else should know what is in my file, unless they have a clear established reason to know.

I am not able to quantify how I have been harmed by this incident, because I do not know precisely what has been done. However, my trust in our government has been greatly diminished by this incident.

Finally, I would like to say that I cannot believe the wasted time and money, at the taxpayers expense, that the Clinton Administration has incurred by accessing these files.

The CHAIRMAN. Thank you, Mr. Craig.
Mr. Dale.

TESTIMONY OF BILLY RAY DALE

Mr. DALE. Good morning, Mr. Chairman and members of the committee.

I am Billy Dale, and my confidential FBI file was the first one discovered to be in the possession of the Clinton White House.

I know of no legitimate reason for the White House to have my FBI file, since my colleagues in the White House travel office and I had been fired by the Clintons 7 months prior to their requesting my file from the FBI. I find it difficult to believe that this was a low-level bureaucratic mistake, as they have claimed, since Mr. Craig Livingstone, in whose possession the file was kept, knew me very well.

You see, it was Mr. Livingstone who filled out the check-out forms for the travel office employees and presented them to us to have processed on the morning we were fired. Mr. Livingstone also

wrote the memorandum to the Secret Service instructing them to remove us from the White House access list, which ensured that we could no longer enter the White House complex. I find it ironic that the stated reason for requesting my file was for access to the White House.

I feel the Clinton White House's having my file is a clear violation of my right to privacy, even though I believe there is nothing in my background files that would be embarrassing to me.

My family and I have experienced a wide range of emotions during the last 3 years: anger, fear, helplessness, frustration, and an enormous amount of stress. When my wife heard of the file, she said, "Oh, no, here we go again." She asked, "Why? When will it all end?"

After what we have been through, nothing this White House does surprises me—not even learning that they had requested and been given my FBI file. I was distressed and disappointed at the ease with which the FBI released the file and how they permitted themselves to be used again by the White House in this abuse of power. Last week, Director Freeh said the FBI had been victimized by the White House. The FBI was not the only one victimized. I along with 400 other people were victimized as well.

I would like to thank this committee for holding these hearings and hope that the result will be the same kind of investigation that took place in 1992 when the Bush administration reviewed Mr. Clinton's passport file.

Thank you very much. I am happy to answer any questions that you may have for me.

The CHAIRMAN. Well, thank you, Mr. Dale. We apologize to all of you and certainly apologize for what you have been through.

Ms. McBride.

TESTIMONY OF ANITA McBRIDE

Ms. McBRIDE. Thank you, Mr. Chairman and members of the committee.

My name is Anita McBride. My name appears on the FBI files list as Anita Carol Bevacqua. I first went to work in the White House in 1984. I held several positions there, including Director of White House Personnel, a position I held for 5 years from 1987 to 1992. Since I left the White House, I have been working part-time as a management consultant to private companies. I have also been taking care of my father who has been very ill. Since leaving the Government, I have not held any position that requires an investigation of my FBI file.

I would like you to have confidence in me when I tell you I am not here on any political agenda. Yes, I am a Republican, and, yes, I served in two Republican administrations. But first and foremost, I am an American and I am a private citizen. I am here because I am concerned that my right to privacy may have been violated through an improper examination of my FBI file.

I have been asked, What is the big deal about these files? I want to help people understand that the information contained in these files is so private and so personal and that it is collected for no other purposes than for being cleared for an appointment to the White House. It contains thorough information about my medical,

financial, and family history, and I understood that this information would remain confidential.

A full-field FBI investigation is intrusive. When I was investigated by the FBI, the agents rightly talked to my neighbors, my coworkers, my former teachers, and my friends. I may never know what those people said about me, true or untrue. It all ended up in my record. If there was a rumor about me contained in my file, there was no rebuttal. If I had lied to the FBI, I would have been denied security clearance and my White House position. If I ever rejoin public life, my current FBI file will form the backbone for a future investigation. So, obviously, FBI files are serious matters with far-reaching consequences.

Like your service in the Senate, an appointment at the White House exposes entire lives to examination, but I did it gladly because the honor of working in the White House was so great—indeed, the greatest honor in my life. I understood that a complete background investigation goes with the territory, that it is serious, and that it is in the best interest of the President and the country.

I am also here today, though, because as a former Director of White House Personnel, I and my staff were responsible for processing the paperwork for everyone hired by the White House between 1987 and 1992, hundreds of people. Because of this, I am familiar with the process of gathering information necessary to qualify people for service in the White House. I also know full well that systems were in place to protect this information and that every effort was made to safeguard the privacy of the individual during my time at the White House.

In short, regarding FBI information, my understanding was that access to those files was limited to the counsel's office. Even as Director of Personnel, I never saw FBI files or summaries.

When I reviewed the list of those former White House employees whose FBI files were improperly obtained, I was struck by the fact that I knew most of them, and, indeed, I had administered the oath of office to the majority of them. So this whole situation has become very personal to me.

I always took pride in the fact that I served as staff. I never wanted to become a public figure or a talking head. I never even leaked a story to the media. I was very proudly anonymous.

And most of the people on the list were just like me. They served anonymously. And what is most troubling is that these now-private citizens have lost the rights guaranteed to them when they left public service. It is disturbing to think that the very private information about us may appear publicly somewhere someday, and this, frankly, haunts me.

Because I served so anonymously, this testimony today puts me in a spotlight I would really rather not be in. Simply, I am here because I never want a breach of security like this to happen to anyone again. What I want and what I think my former colleagues would like from this investigation are answers to the many questions we have, and listening to all of you, the answers to the questions you have, too: How was this list compiled? Why were the files sought? What was the motivation? Who examined the files? And what, if any, information was copied or distributed?

I am someone who served my country with the purest motive, truly: to do the best job for the President that I could possibly do. This situation causes me to doubt the institutions I once served so proudly and in some way diminishes my service, too.

I am happy to answer any questions you have of me.

The CHAIRMAN. Well, thank you so much.

Ms. Carroll

TESTIMONY OF MARY CARROLL

Ms. CARROLL. Thank you.

Mr. Chairman and Senators, my name is Mary Kate Carroll, and I also worked in the Office of White House Personnel. I hope you don't mind if I simply speak to you from my heart this morning.

I went to Mass this morning and prayed, actually, that I would be inspired to say the right thing here. I feel a tremendous responsibility to 400 people, many of whom I knew, who are not here to speak for themselves.

Just to touch on a few things, many of my friends, my mother-in-law, asked me: What are these FBI files, and why are they of such great importance? Aren't they just employee information?

I just want to say for the record I was taken into a private room in order to gain my security clearance. I was asked very personal information. I was told it would remain personal, and I am deeply offended that it has not.

My second point: I am a mom. I haven't worked at all since I left the White House, and I want to also say I very proudly served at the White House. Greatest honor of my life. No greater, however, than being the mother of my two precious children. I am embarrassed and I am angry. I am simply a decent citizen. I am trying to raise two Christian children. And this is what I have to deal with?

I resent that my file was asked for, that it was retrieved, and then it was handled in such an unprofessional and, if I may, indecent manner.

Thank you.

The CHAIRMAN. Thank you. We have some questions for you.

Let me just ask you as a group, have any of you ever read your FBI files? Have you ever had the opportunity, any of you?

Ms. MCBRIDE. Never.

Mr. DALE. No, sir.

The CHAIRMAN. None of you have?

Ms. MCBRIDE. No, sir.

The CHAIRMAN. You haven't even had the chance to look at your own FBI file?

Ms. MCBRIDE. No.

The CHAIRMAN. At the time that the White House was looking at your files in late 1993 and early 1994, were any of you being considered for White House employment?

Ms. MCBRIDE. No, sir.

Mr. DALE. No, sir.

The CHAIRMAN. And you had been fired, Mr. Dale?

Mr. DALE. Yes, sir.

The CHAIRMAN. So there was no real reason for anybody to ask for your files.

Mr. CRAIG. Senator.

The CHAIRMAN. Yes?

Mr. CRAIG. Actually, I was with the wind down staff at that point, and I did make two cleared trips into the White House to meet with Tom Hubbard, who was a holdover from the Bush administration, to clear up some lists for the Air Force One bills. But that was my only two contacts with the White House.

The CHAIRMAN. And you were an intern?

Mr. CRAIG. No. I was on the paid staff of the Bush-Quayle campaign at that point, but I made two cleared-in trips to meet with—

The CHAIRMAN. But I mean when you were in the White House, you were just an intern?

Mr. CRAIG. Oh, yes. Yes.

The CHAIRMAN. Can any of you think of any reasonable explanation why the Clinton administration asked for and received copies of your files? Any of you?

Ms. McBRIDE. No, sir.

Ms. CARROLL. No.

The CHAIRMAN. In fact, the FBI hardly needed to provide any justification to obtain your personal, sensitive background information. You described that pretty well, Ms. McBride, although it is a lot more than you described as well. It could be scurrilous remarks, wacko statements, and a whole bunch of other things.

Ms. McBRIDE. Absolutely.

The CHAIRMAN. They take down everything.

Ms. McBRIDE. Everything.

The CHAIRMAN. Now, these were summaries. Naturally, they didn't contain everything that the FBI field file did, but summaries still are important, aren't they, Ms. McBride?

Ms. McBRIDE. Yes, certainly they are.

The CHAIRMAN. Don't they contain basic references to things that could lead to all kinds of inquiries and questions and scurrilous accusations?

Ms. McBRIDE. Certainly they do, sir. However, I do want to make it clear I never even saw summaries, and it was my understanding that that information stayed solely with the counsel's office, that they were the only ones that had authority to view that information.

The CHAIRMAN. Well, if you turn to this chart, if we can turn to this blown-up example of a standard request form from the White House to the FBI, all the White House had to say is that they were checking for "Access" purposes. For decades, the FBI relied upon the honesty and good faith of the White House.

Now, how do you feel knowing that this White House could obtain your sensitive, personal background file simply by sending over this preprinted form? Anybody care to comment about that?

Mr. DALE. Well, I think personally I am very disappointed in the FBI. I have been a citizen that respected the FBI all my life, to a certain degree feared them. But when I see this, I don't know how much confidence I can have in them in the future.

The CHAIRMAN. Well, let's take a look at the people who actually were requesting the files. And, by the way, we are giving 7 minutes to everybody.

This is the White House personnel security command. As you can see, in the White House, Bernard Nussbaum, as White House counsel, had primary authority of the security office, and, of course, he had since resigned. William Kennedy was the associate White House counsel who worked closely with the security office, and he also had to resign.

Below them were two Democrat political operatives, Craig Livingstone and Anthony Marceca, who had access to your background files. Mr. Livingstone worked as an advance man in the campaigns of Geraldine Ferraro, Gary Hart, Tim Wirth, Michael Dukakis, Al Gore, and Bill Clinton. He also worked for the Democratic National Committee and worked on some of the Democratic conventions. He had no security background and had no law enforcement training.

The other individual that we now know is involved, Anthony Marceca, was brought into the White House as a detailee by Mr. Livingstone. He has told committee staff that he had worked on the campaigns of Edmund Muskie, George McGovern, Walter Mondale, Gary Hart, and Al Gore. He knew Mr. Livingstone from their work together on political campaigns.

These two people, to put it mildly, or to put it charitably, were political operatives.

Now, how do you feel having heard the backgrounds of the men who were looking through your sensitive, personal backgrounds?

Mr. CRAIG. Senator, I think as a law student, someone who has 1 more year left and having some understanding of the three branches of Government, I think this is certainly overreaching on the executive branch's police authority. I mean, they are charged to faithfully execute the laws of the country, and I think they took advantage of the situation here. And using political operatives under that guise is simply outrageous to me.

The CHAIRMAN. OK. Anybody else? Ms. McBride?

Ms. MCBRIDE. Senator, the titles of the people who are listed here would be absolutely appropriate to have access to those files. During my tenure at the White House, we trusted the counsel's office, all of us trusted the counsel's office, that people put in those positions to view those files maintain that information confidentially.

I don't want to sit here and question, you know, the credentials of any of the people listed there. The President had faith in them. He had faith in them to serve in those positions. It is unfortunate that with that trust they violated not only all of us, they also violated the President. And they compromised him, and they compromised the institution of the Presidency.

The CHAIRMAN. Anybody else?

[No response.]

The CHAIRMAN. The current questionnaire for national security positions, Form SF-86, promises, "The information you give to us is for the purpose of investigating you for a national security position. We will protect it from unauthorized disclosure."

I would like to ask each of you if you relied on a similar guarantee of privacy when you were in the White House and when you provided personal information to the FBI?

Ms. MCBRIDE. Yes, sir.

Mr. DALE. Yes.

The CHAIRMAN. Each of you has?

Ms. MCBRIDE. Yes.

The CHAIRMAN. OK. Some apologists for what many will call an outrageous breach of security by the White House claim that nothing wrong happened because there was no real damage done to any of you.

Billy Dale, you in particular, you were then under investigation and prosecution by the administration for what has turned out to be political reasons. How do you respond to this claim?

Mr. DALE. Well, I think that the reason nothing happened to me is because they couldn't find anything. I truly feel that if they had found anything in my file that was derogatory toward me that it would have been used. And I would question the White House, if nobody saw these files, then how did my file end up in the Travelgate investigation papers? It is my understanding that these files were mistakenly requested from the FBI. Well, I might be able to accept that for the other people, but not for myself.

The CHAIRMAN. Do the rest of you feel that you were injured or do you agree with the administration that no harm was done even though your personal sensitive background files were laid open to a pair of political operatives and who knows who else?

Ms. MCBRIDE. Senator, it is easy for me to tell you—I can assess the damage in this way, in three things: The faith in the institutions that I served and the Government that I served is shaken. The fear that information about me that I don't even know, I never saw, may appear publicly somewhere someday—perhaps I will re-enter public life. I don't know who has some information that perhaps they copied that I will see and will hurt me. And the other, but most importantly, is you don't know how difficult it was for me to describe to my 83-year-old father why my name appeared on a list in the newspaper and that I had to appear publicly before all of you, with cameras and reporters.

You know, he is wise enough to know that once you go public, there is no controlling it.

The CHAIRMAN. My time is up. Senator Biden?

Senator BIDEN. It is certainly not in my position or my ability to apologize to you on behalf of the White House, but I will tell you what, if this occurred as a consequence of anything this committee did, you would have my abject apology.

I don't think there has to be a proof of anything having hurt you. I mean, it is offensive just simply to know anyone would have access that is unwarranted.

I, quite frankly, am a little bit—well, anyway, I won't go into that.

One of the things that I want to get to, and I think my friend from Arizona made a valid point, the issue isn't whether or not they were summaries or full files. The issue isn't whether or not they were used or not used. The only reason those issues are raised is to go to motive here.

You were violated, period, regardless of the motive. If it was stupidity, you were violated. If it was—for nefarious reasons, you were violated. There is no question about that.

We kind of have a two-tiered responsibility here. The first one is to find out, are they as stupid as they appear to be, are they as

incompetent as they appear to be, and if that is all there is, that is still bad. That is bad. That is a problem, but there is a second question that will obviously be brought up, and as part of the opening statements of some of us, some of my friends in the committee, and that was, was this done to create a list to get people to get information and dirt to be used for political reasons. That is a second question.

It doesn't matter why it was done. Incompetence or malevolence, it was still a violation of your rights, and you are owed an apology.

Now, one of the things that I should say, Mr. Craig, you should be mildly reassured, you were No. 272 on a request of 400-and-some documents, and nothing was provided. So no FBI file on you is provided to anybody, summary, otherwise, nothing, and it was because nothing provided, not identifiable information located. So I don't want to insult you by suggesting that they didn't think you as an intern had anything, but there wasn't anything according to the FBI, the receipt we got here. Nobody ever got anything about you in the White House because nothing was ever sent.

There was a request made, but nothing was ever sent, unless this information I have been given was wrong. So I am glad you didn't have to worry about this on your honeymoon. You shouldn't have to worry about these things on your honeymoon, and you shouldn't have to worry about it now in your case.

The others worry in the sense that there was something sent.

Now, Mr. Dale, I am confused about two things, and you may or may not have the answer to these. I don't expect you to know the answer, but you just may. You indicated that yours was the first file requested. Now, as I understand it—and correct me now if you have different information, OK? There was apparently at some point prior to Mr. Marceca asking for ad seriatim a number of 400-and-some files in alphabetical order getting up to G-o from A, OK?

There was, apparently, the FBI investigation, who was asked by the White House to investigate you as it related to the whole Travelgate thing, and before the request was made by Mr. Marceca as part of this longer list that he sent over day after day to the FBI.

Do you know when and if the FBI requested your file?

Mr. DALE. No, sir. If I indicated that mine was the first one that was requested, I am sorry. I didn't mean that.

What I meant is that my file is what brought this to—

Senator BIDEN. I got you, OK. Good. I have asked the FBI, and they are checking this.

Do we have an answer?

Apparently, your file was pulled 1 month before your trial by the FBI, but it was pulled before any request was made by Mr. Marceca.

Am I pronouncing his name correctly? Marceca. I apologize. People call me "Bidden," and I don't like it.

Mr. Marceca had a list that he was working from. We are going to have to find this all out, too, but he alleges he had a list he was working from, and the way I am told it worked was—I have not spoken to him, though, but investigators have—what he did was he had a series of names. He started through them alphabetically.

For example, on December 6, 1993, he asked for a gentleman's name, a woman's name whose name started with A-a. I don't read the names. Then he went to A-b on the 6th. On the 6th, he asked for five more names. He goes down the list, and each day he would ask for more names, the impression being given that he had this long list. His job was to go through the list, he thought, at least alleges, and that he just went down them ad seriatim in alphabetical order.

Would you mind putting up that form that you stuck up before that goes over to the FBI? I would appreciate it.

Understand, this form is the exact form that has been used for four presidencies. So there is nothing new about the form, that form where they request whether they want a name check or they want a copy of a previous report.

This list of 481, I think it is, were all requests for previous reports, not name checks. Now, there may have been other requests made in addition to this list. I don't know that.

You didn't even get on the list until the 28th, Mr. Dale, after 305 other people's names had been requested, and the reason I think that is important, at least for me to know, in terms of going to intent, not whether or not your rights were violated, this is after you had been dismissed. This was apparently—correct me, staff, if I am wrong—after the FBI pulled your file, before your trial.

Is that correct? I am not confident that answer is correct because I don't think they listened to my question.

Mr. DALE. Senator, I can tell you for a fact that that is not true.

Senator BIDEN. Well, that is what I want you to tell me. What do you think? What do you know?

Mr. DALE. My trial didn't take place until October 1995. That request from the White House was made on December 20, 1993. It is my understanding that the FBI file was forwarded from the FBI on December 28, 1993, and arrived at the White House somewhere around January 6, 1994.

Senator BIDEN. That is correct. That is the information I have.

Mr. DALE. Now, my attorney asked for my file during the trial or shortly before it started. He was told that the FBI couldn't find it, but they did eventually find it, 7 to 10 days later or something like that.

Senator BIDEN. OK. So your trial was 9 months after or thereabouts.

Mr. DALE. 18 months later.

Senator BIDEN. 18 months after.

Mr. DALE. Almost 2 years.

Senator BIDEN. I have got you. OK.

Now, do you know whether there was any request made for your file other than or in addition to the request where you appeared in alphabetical order with 481 other people? Do you know?

Mr. DALE. Well, my attorney is right here. He could tell you better than I, but during the trial, he requested the FBI background file. He was told that they couldn't find it.

A week or 10 days later or a few days later, they did find it, and they turned it over to him.

Senator BIDEN. OK.

Mr. DALE. This was in late October 1995.

Senator BIDEN. Well, I thank you all. My time is up. I appreciate your testimony, and again, I think I would feel exactly like you feel if anybody had access to anything, and by the way, you all do know—I am not sure it is worth you doing it—you can request under the FOIA to get your FBI file.

Mr. DALE. Yes, but it only takes about 4 years.

Senator BIDEN. No, I understand. Look, it has nothing to do with them. I am just setting the record straight that you can do it if you want to do it. I am not recommending it or not. I am just telling you, you can.

Ms. MCBRIDE. Even so, Senator, can I just say, I would never see a complete account. It would be a redacted account.

Senator BIDEN. I agree.

Ms. MCBRIDE. Thank you.

The CHAIRMAN. Thank you, Senator Biden.

Senator Simpson.

Senator SIMPSON. Well, thank you all. It must be painful for you. Anita, I know you and I knew Tim so well. I saw Tim serve George Bush, President Bush, with such loyalty and diligence, and I know who you are, you people at that table, or some of you.

I agree with Senator Biden and all of us here that this is an appalling thing, absolutely appalling, and it is so offensive. It is a violation. It is an intrusion of the right to be left alone, which we are all told we have in this country.

I do remember, and this not a partisan statement because there were votes on both sides, but I remember the continual line of questioning of Judge Robert Bork about privacy, privacy, privacy, privacy, privacy, day and night, while some jerk was going through his video rental records, a journalist as it was. Isn't that interesting?

So you knew I would get a shot like that in. I wouldn't have missed it for the world.

It is disgusting, and I know you people as impressive people, but I don't think people understand out in the country. Maybe they are getting to understand, but it seems to me that the first response from the White House in every situation is to deny, and then you almost know because you practice law for 18 years, that somebody cornered the guy and said, you know, you can go to the clink for that.

So they gather him together again and they say where is this stuff, if you have it, you are going to be charged with perjury and you are going to go to jail, and then everybody wrestles around over there for a couple or 3 weeks or a couple or 3 months, and then they cough up the goods. After they huddle, they cough up the goods, and I think people are offended by that.

First, the immediate, denigrating, smart-aleck response, whatever it is, and then seething and then sitting and then probably jerking the guy by the neck, saying are you lying or not, and then coming forward with it. That is not the good way to do the Nation's business, but I will tell you what, the people have to understand when we are talking about a summary, a summary of these files is a very complete document.

So, when you think that you are not getting the whole load, that you are not getting the big stack, let me tell you, you are getting a stack that would choke a horse, anyway, and here is what it is.

Just that inquiry generates this. This is just the summary. This is the stuff that comes out of the summary, and I won't go through it because I have a little time. Police records, ever been arrested, convicted for a felony, ever charged, convicted with firearms, explosive offense, pending charges for criminal offense, drugs, alcohol, controlled substances, traffic fines over \$100, medical record, any problems because of an emotional mental condition. How would you like that one to just come to the hands of some second-water jerk?

Ever seen a health care professional or an environmental mental condition, emotional, an emotional mental condition? Provide details. This is the summary. This isn't the big stack.

Have you ever used illegal drugs? Provide details. Have you ever experienced problems with illegal drugs? Ever had a clearance denied, ever been to bankruptcy, legal judgment rendered against you or delinquent in any financial obligation, ever been a member of an organization, and so on, the usual stuff from the old days?

All family members, names, dates, marital status. How about the one that says ever been unfaithful to your spouse? that is in there. That is one of the personal questions asked.

Persons living with the applicant, who are they, relationship, and then there is a supplemental SF-86 form which contains 10 questions and is considered part of the form.

All corporations you have been with past 5 years, all interest in real property, ever been associated with anybody ever charged with a violation of an ordinance or a law, subject of any Federal or local investigation, ever been disciplined, ever run for public office, held a position in a campaign, currently a member?

How about this one? Is there anything in your personal life that could embarrass you or the President if publicly known? Is there anything in your personal life that could be used someone to coerce or blackmail you? And you are sitting in a room with a person who is telling you that none of this will ever become public.

Federal Bureau of Investigation letterhead memo goes with this, summarizing the results of the investigation, biographical data which lists all previous investigations. "Summary of the candidate interview contains comments from an applicant on various topics which may have surfaced during investigation," that covers everything in life practically.

The interview section summarizes the comments rendered to the FBI during interviews, and special interest groups section, "contain any remarks made when contacted by the FBI." That is the sentence. Special interest groups section, "contain any remarks made when contacted by the FBI."

Then, finally, in some instance, the complete candidate interview will contain in the summary, and this interview would contain disclosures made by the applicant regarding any personal or financial problems. That is the summary. That is not the full stack, and that is what was presented about you to someone else, and I think somebody failed miserably, but the FBI is at fault. The White House is at fault. We will try to seal some of those holes in the future by law, and if I know the members of the committee as well

as I do, it will be a bipartisan sealing of the holes because it is just not fair, and that is a word that is not corny yet in political correctness.

Senator BIDEN. You should have asked some of those questions.

Senator HEFLIN. I would agree with what everybody has said, and I don't think there is any question about it. This is very offensive and appalling. I would hope that steps would be taken at all various possibilities that FBI files, whether it be a summary of 3 pages or whether it be a large file of 300 pages, regardless of what it might be, that it is not made available to any person other than those that have a need under the law for it.

I was interested in questions that you answered to Senator Hatch. He asked you if there was any reason to ask for your file, and I think he asked you was there any reasonable explanation.

Perhaps, Mr. Dale, there might be, but I assume that you don't know of any reason or any reasonable explanation that might be given.

Ms. MCBRIDE. Sir, I was not seeking an appointment with the Clinton administration, and based on my credentials, I don't think they were interested in me.

Senator HEFLIN. Well, those questions may be very helpful in trying to get to the real matter; that is, motivation and intent. What was the reason that it was requested of you? In other words, why was your name put in regard to it? Do you know of any political reason why your name ought to have been on the list?

Ms. MCBRIDE. I am not involved in politics anymore.

Mr. DALE. I think it is very easy for me to conclude why my name was there.

Senator HEFLIN. Yes, I understand that. I have no question about that in regard to you.

I think one of the areas of inquiry that we have to go into is motivation and intent, and that includes what was the reason that they were requested and each name would be what is the reason. I think that would help us in regards to intent, and finding out intent.

Ms. McBride, I noticed you made the statement that you felt like what has happened here violated the President.

Ms. MCBRIDE. Sure.

Senator HEFLIN. Would you explain what you mean by that?

Ms. MCBRIDE. I think when you are privileged to serve in a position to support the President of the United States, no matter what level it is, from the groundskeeper to the clerks to personnel to chief of staff, you are entrusted. The President has confidence in you to do a good job, even if he doesn't know you.

In this case, with the individuals who he entrusted to work in the security office, they have not only hurt him, but they have hurt the presidency and the very institution that they were all sworn and took an oath to serve.

Senator HEFLIN. Thank you.

That is all.

Senator SIMPSON [presiding]. Yes, Senator Grassley.

Senator GRASSLEY. Mr. Chairman and members of the committee, I don't have any questions of this panel, but I wanted to take a couple of minutes to bring up something that I hope we get

a chance to look into in regard to these FBI files, and I am not going to ask the panel, but I want to speculate that through your interviews from the FBI and the other information that you gave, you may have given some income tax information, tax information.

If you didn't, I am sure out of 408 people, somewhere along the line, people would have given income tax information.

This information can be considered tax return information, and the term "tax return information," I get from 28 U.S.C. 6103, which tax return information is protected by the criminal sanctions for improper disclosure.

Quarterly reports to Congress about this information are required, and not only about the information, but why the information was requested in the first place.

From what I have been able to find out, we have had no quarterly reports to Congress having been made on these 408 people, although from what I have been able to find out, you can't be conclusive on that, and I think this needs to be looked into.

I suppose now, as of this morning, we have an independent counsel looking into this. It is my hope that we will find the answer to whether or not this law was followed; in other words, making known to Congress whose tax information was requested and why it was requested, because this law obviously ought to have been followed in regard to this personal tax information.

The importance of this issue is reflected by the members of this panel. I don't think you will be insulted if I don't call you high-powered political actors. They aren't Republicans or Democrats first. That doesn't even matter, as I have sensed everything that you all have said because issues of privacy transcend all of that. It is the most intimate personal information that was given in confidence, and that trust has been violated, and that is why you are here. You are real citizens whose rights have been violated, and I think your testimony drives home the very real nature and tragedy of this issue, and we need to know how it happened. So I want to thank you.

I yield the floor.

Senator SIMPSON. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I think all of you know that when you went to the White House, obviously it was appropriate to have an FBI file. I gather your concern is that when you stopped working for the White House, your file was requested. It is up to us to find out how and why and for what reason.

I would like to ask all of you whether you have any information that your file was in any way disclosed or used or shared with anyone, any information to indicate that anything other than keeping your file in a locked room somewhere took place.

I wonder if we could just quickly go down the row and you would answer that question.

Ms. GOBER. No.

Mr. CRAIG. No, Senator.

Mr. DALE. Senator, I think the jury is still out on that. I say that in that who knows a year from now, 6 years from now, what may be revealed that was in the file.

Me personally, I have nothing to fear from what is in that file.

Senator FEINSTEIN. Thank you.

Ms. McBride.

Ms. MCBRIDE. To this date, so far, no, I don't, Senator. I hope it remains that way.

Ms. CARROLL. I am the same. However, I agree with Billy that it doesn't matter. The privacy was breached, and that is the issue.

Senator FEINSTEIN. Well, let me ask you this about whether the privacy was, in fact, breached or not.

The file, we know, was sent to the White House. We have to get at the root of how or why, but we don't know that your privacy was ever breached.

Ms. CARROLL. Did anyone read it? Do we know?

Senator FEINSTEIN. Well, that is what I am asking.

Ms. CARROLL. If one person read it, then it was breached.

Senator FEINSTEIN. Do you know that it was breached in any way?

Ms. CARROLL. The fact that it was requested breached my privacy.

Senator FEINSTEIN. OK. So, essentially, your concern is just simply with the request.

Ms. CARROLL. It begins there and ends with the big question mark of I don't care of one person read it. One is too many.

Senator FEINSTEIN. So you have no reason to believe you are any part of an enemies list or that your files were requested for any political reason.

Ms. CARROLL. No.

Mr. DALE. I don't think you would ask that question of me.

Senator FEINSTEIN. I understand your feelings, Mr. Dale, and I would like to ask that separately in another way, but of the other three remaining witnesses.

Mr. CRAIG. Apparently, my file wasn't sent, according to Senator Biden.

Senator FEINSTEIN. Right.

Mr. CRAIG. I still think the point is if it was an intent to do something and the request was made that that is the damage right there, whether anything was read or not. I mean, the intent to access those kind of files is what is the problem.

Senator FEINSTEIN. If they were, in fact, accessed.

Mr. CRAIG. True.

Senator FEINSTEIN. Anybody else have a comment?

Ms. MCBRIDE. Senator, I do, actually. I am more puzzled than all of this about the list, the actual list. I think having served as director of personnel, I am familiar with so many of those people, and that Senator Biden, when he mentioned the list and the first person's name, I know that individual. She left at the end of—

Senator BIDEN. Let the record show I did not say what her name was.

Ms. MCBRIDE. I know, and I won't say it either, but she left at the end of the Reagan administration. There were others who served the full Bush administration.

I am so puzzled by the list, and I am concerned about the motivation for that.

Senator FEINSTEIN. Well, I think that is a correct feeling, and I am, too. I mean, realistically, on the one hand, at least I want to

know were all the files from the Bush administration removed, and yet, certainly, there would be a reason to ask for the files for the holdovers from the Bush administration.

Ms. MCBRIDE. Sure.

Senator FEINSTEIN. How many were there? Why were the additional files requested? I think that is important to know, but for those of us who work in Government, I mean, I don't think it is a big surprise that there is an FBI file.

I also don't believe that your names were all released, as my understanding is at least one of you, your name was released by a House committee doing this investigation. Otherwise, no one would have known, and I think that was you.

Is it "Gober"? Ms. Gober. The House committee released your name. The White House didn't release your names. So the question is, if we really go back, and I have been reading the committee transcript from the earlier trials of the so-called enemies list, and it was a very different situation as far as the reason why information was requested. I won't go into that now because I don't think it is relevant to this, but I am interested as to whether there was any malevolence or any political use or any misuse of the file because you all know a file exists.

Ms. MCBRIDE. If I could just respond. Senator, I just feel very strongly that, you know, we are here so that you can identify us as average citizens. We should not have to prove that we are not at the level of someone who would be on a so-called enemies list. I am proud that I will probably never, ever be on a list like that.

I left the White House after 8 years, having never embarrassed my position or embarrass the President, but that doesn't diminish in any way the fact that my file is just as important as some of the key figures that I would have served with in two administrations.

My name for some reason that I am very confused about was even printed on a list from whomever that list came from, which I hope that through your investigations and the House investigations you will find that out. How was that list put together? It really does make no sense.

Senator FEINSTEIN. But for you, Ms. McBride, you have no way of knowing whether that was just incompetence, just an error, just a mistake.

Ms. MCBRIDE. I find it so hard. I would like to believe that it was a mistake. It is a colossal blunder. It is unbelievable to me that it is a bureaucratic mistake. There were not bureaucrats working on this.

Senator FEINSTEIN. Who do you believe they were?

Ms. MCBRIDE. Well, I see two names up here who at least had the ability or the authority to have those names, that list, those files in their office.

Senator FEINSTEIN. Then the next question, obviously, for us to ask is to ask those people if they have, in fact, gone through those files.

Ms. MCBRIDE. I would love to hear the response to that.

Senator FEINSTEIN. I think that question clearly should be asked.

Ms. MCBRIDE. Right.

Senator FEINSTEIN. I was just curious as to whether, possibly with the exception of Mr. Dale, any of you have really been aggrieved in any way other than having the White House ask for your file, which as far as I can tell none of you know was ever looked at.

Ms. McBRIDE. Fine.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Feinstein.

Now Senator Specter, please.

Senator SPECTER. Thank you, Mr. Chairman.

At the outset, I agree with the conclusion that there has been a significant breach of your privacy just to have the files obtained. Whether people looked at them or not would be important in terms of the aggravation of injury, but just to have your files obtained, I think is wrong, reprehensible, unjustifiable.

I would pick up on what Senator Heflin asked about with respect to the question of motivation or intent. I don't think it is really relevant whether you have been aggrieved beyond the privacy violation. It is sufficient in terms of your own injuries. However, Ms. McBride, when you say that it is a colossal blunder and a bureaucratic mistake, that it is a question that the committee wants to look at to see if it is an egregious mistake as, contrasted with whether there was a motivation to hurt you in a political context.

My hope would be that at the earliest time we would move ahead and start to find out who asked for the files, what their reasons were, whether they were instructed to do so by a superior, whether that superior was instructed by somebody else, whether it was the climate of carelessness, or just exactly what was going on. But, since you are here, I think it is important to try to determine whether there was some malicious intent, whether there was some political motivation and whether they were looking for something special about you. If they were, then that elevates the matter in terms of offense to the public.

You have already been aggrieved as individuals, no doubt about that, but if they were trying to do something in a political context, then it is a matter of concern beyond your own individual privacy breach.

From what I understand, only Mr. Dale fits into that category where they might have been looking for something which would have some range beyond the own invasion of Mr. Dale's privacy, and I would like to pursue that for just a minute or two, Mr. Dale.

You were acquitted. I think it is important to bring out at the outset that there had been charges filed against you and you were exonerated. I say that at the outset because I now want to ask you, with respect to the charges which had been filed against you, whether any of this information sought by the White House would have enabled them to have harmed you or promoted the criminal prosecution.

Mr. DALE. Well, I don't think it would because not having seen my file, I truly believe that there is nothing in that file that is derogatory towards me. So I don't know how this file could have been used.

Senator SPECTER. Have you made a request, Mr. Dale, for your file?

Mr. DALE. Well, my attorney has had the files and has seen them. I have not personally seen them.

Senator SPECTER. Do you know if they were redacted; that is, parts were crossed out?

Mr. DALE. I don't know. He is sitting right here. Maybe—

Senator SPECTER. I would be interested to know if your counsel would be willing to respond.

Would you identify yourself sir, counsel to Mr. Dale.

Mr. TABACKMAN. Steven C. Tabackman.

Senator SPECTER. You have examined Mr. Dale's files which the FBI had?

Mr. TABACKMAN. I examined parts of Mr. Dale's files, 3 years worth of background checks that had been done in the early 1980's.

Senator SPECTER. Are there parts which you haven't examined?

Mr. TABACKMAN. There are parts that I have not examined.

Senator SPECTER. Do you intend to examine them?

Mr. TABACKMAN. We will, and we will be examining those.

We had requested an examination of those background checks that had been conducted immediately prior to Mr. Dale's dismissals.

The most recent background check had been conducted in 1991, and we sought to get that for particular reasons, and I think this goes to your question, Senator.

Senator SPECTER. My question goes to the content of the file.

Mr. TABACKMAN. Exactly.

Senator SPECTER. Under ordinary procedures, it takes a long time to get an FBI file. My sense is that if there is some irregularity in the handling of the FBI file, as in your cases, you ought to be able to get them immediately, and you ought to be able to get them without having them redacted, unless there is some very, very strong reason to have something crossed out.

If there is a representation made that there is an important reason to have them crossed out, I think it ought to be submitted to a judge in camera or in secret to take a look at it to see if there is a bona fide reason to have something crossed out.

That might shed some light on why your files were sought. Maybe it was, as you put it, Ms. McBride, a colossal blunder, a bureaucratic mistake.

Ms. MCBRIDE. Can I just correct one thing?

Senator SPECTER. Sure.

Ms. MCBRIDE. I don't think it was a bureaucratic mistake.

Senator SPECTER. What would you conceivably ascribe to motivation for them to look for your file?

Ms. MCBRIDE. I don't know, sir.

Senator SPECTER. That is why I think if you saw your file or if your counsel saw your file, you might see some reason for it.

Mr. Dale, let me pursue with you the question as to a reason why somebody at the White House might have wanted to see your file to put you in a worse light.

The FBI obviously had access to your file. You were subject to a Federal prosecution, correct?

Mr. DALE. That is right.

Senator SPECTER. So the prosecutor in that case would have had access to your file. So had there been anything there which would

have hurt you in the criminal prosecution, the prosecutor would have been able to do that.

Now, the question, then, beyond that is, would the White House have had some interest in seeing your file to injure you in some collateral way?

Mr. DALE. Well, it is easy for me to think yes, but as I have stated before, I don't think they found anything in that file that they could use.

Senator SPECTER. Well, listen. We don't know. We want to find out. We have a duty to find out in an impartial, unbiased way.

It is conceivable, although I doubt it, that they might have sought a tremendous number of files so there would be no conceivable purpose for a smoke screen. I don't know. Maybe there are only a few files in there that they wanted to look at, but on the surface, if you have your five witnesses where there does not appear to be any reason for the White House to have asked for the files, then it does look as if it is a mistake, albeit a colossal mistake.

So that is why I would hope that we would pursue this, Mr. Chairman, to see if we might not shed some further light since we have had these witnesses in, to try to get them access to their files, unredacted, unless in camera some impartial judicial official says there is a good reason, and maybe even so perhaps you and the ranking member or members of this committee could take a look at it to see if there is some motivation because on the surface there appears to be none which would suggest a mistake, but we ought to look further.

Thank you very much.

The CHAIRMAN. Well, I don't look at it as a mistake in Mr. Dale's case, in particular.

Senator Brown.

Senator BROWN. Thank you, Mr. Chairman.

Mr. Dale, on June 6, the White House said it was actually the GAO that had asked for your file pursuant to an investigation of your firing. The GAO later denied that that was true, indicated the White House statement was not accurate.

Are you aware of a GAO investigation of your dismissal?

Mr. DALE. Yes, sir, I am.

Senator BROWN. Do you have any information to indicate that the GAO requested your file?

Mr. DALE. No, sir, I do not.

Senator BROWN. Do you have any idea why the White House would say it was the GAO that had requested your file rather than themselves?

Mr. DALE. No, sir.

Senator BROWN. The White House indicated on June 10 that all the files requested were requested accidentally because the Secret Service gave them an outdated list. Have any of you had contact with the Secret Service or related agencies that would have led the Secret Service to produce a list with your name on it as someone who needed access to the White House during this period?

Ms. MCBRIDE. No, sir.

Mr. CRAIG. No, Senator.

Mr. DALE. Senator, let me say that over the 32 years that I spent at the White House, I dealt very closely with the Secret Service on Presidential travel. I have found them to be a very efficient organization, and for them to turn over a list like this, I can't believe it.

Senator BROWN. Ms. McBride, I wanted to address a question to you, if I could, if you are comfortable in responding.

Ms. MCBRIDE. OK.

Senator BROWN. The White House claims that this was a low-level bureaucrat's mistake. One of the individuals involved, Mr. Livingstone, is paid, as I understand, \$65,000 a year, or was, and has the title of head of personnel security for the White House.

Is it your impression that the person who is the head of personnel security at the White House and who is paid \$65,000 a year is accurately described as a low-level bureaucrat?

Ms. MCBRIDE. Sir, you know, in my years that I served as personnel director, I was very proud of the fact I never breached the confidentiality of anybody's salary, any information that is in their personnel file.

It is completely up to the Chief of Staff and the President to determine what they want to pay the people on their staff.

I would not like to make any assumptions that that salary would be associated with a low-level bureaucrat. The President has the right to assign any salary he wants to anybody on the White House staff.

Senator BROWN. What about the title of head of personnel security?

Ms. MCBRIDE. The title, at least in the two administrations I served, was a little bit different. It was just director of security, and it was a position that fell under the counsel's office, but I don't remember the title ever being director of personnel security, but that would be up to the Clinton White House. They could have very well changed that title. That would certainly be within their purview.

Senator BROWN. I recall before I went into the Navy, while I was in graduate school, I interviewed with a number of people for jobs. One of the organizations I interviewed was an agency that dealt with national security, and I remember the questions they asked, some quite vividly.

One involved a question about what your mother thought of your father, what your father thought of your mother, what personal traits of your father that your mother was critical of, what personal traits of your mother that your father was critical of.

Presumably, if I have a file, and I assume I might, that answers that I was required to give to apply for the job would be included.

My own sense about those questions were that I understood the Government's need to make sure I was a stable person, but that was information that I thought was no one else's business.

Ms. MCBRIDE. Right.

Senator BROWN. I can appreciate all of you saying that there is nothing that you know of in the files that would embarrass you, secret criminal convictions or things like that, but to the extent you are comfortable, I would appreciate knowing if there is information that could be in those files that you feel is inappropriate to be

made public or to be made available to others without your knowledge or approval.

Senator BIDEN. As your counsel, I would caution you not to answer that question.

Senator BROWN. Well, I must tell you—

Senator BIDEN. I mean, if they don't want people to know it, why would they tell you what it was?

Senator BROWN. I think what I am asking is, over the years of your service, if you have been asked questions that you understood the need for somebody to ask, but weren't appropriate for public exposure.

My parents were divorced. The criticism my mother might have had of my father might have been essential for that agency to know about, but it certainly wasn't anything that I think anybody has a right to make public.

Mr. DALE. Senator, the only thing I know is that I had a brother who has suffered from mental depression, and it was primarily my responsibility to take care of his affairs. He died in 1988. That is not something that I am ashamed of, but that is not something that I went up and down the street and broadcast to all the neighbors and everybody that I knew.

The closest people that I worked with knew about it, yes, but no, I don't want everybody all over America knowing that. Other than that, I don't know of anything.

Senator BROWN. Anyone else?

Now, Mr. Chairman, let me simply close with an observation, if I could. It has been a question that has been raised in our discussion about the activity involved here and whether or not it rose to a level of violating the statute.

As I read 5 U.S.C. 552(a)(i)(3), it says any person who knowingly and willfully requests or obtains any records concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor.

As I understand it, in this case, a memo was sent under the name of White House Counsel Nussbaum to the FBI requesting the files. Mr. Nussbaum indicates that he was not aware, at least I understand he indicates that he was not aware that he had made that request, but it was made in the course of people working for him that may have had authorization to act in that manner, but at least my understanding from the reading of the law is that when the director of the FBI and the FBI report indicates that there was no official purpose for these requests that that appears to indicate there was an official purpose. It violates the law.

Now, those memos indicated the information was requested because these people were being considered for being allowed access to the White House. In other words, the memo indicated that the official purpose or the reason that justified it was because these people were considered for access to the White House.

You have referenced this area before, but let me ask all of you. Are there any of you who had requested access to the White House or as far as you know were being considered for access to the White House during this period?

Ms. MCBRIDE. Absolutely not.

Ms. CARROLL. No.

Mr. CRAIG. Senator, what I was trying to convey earlier was that as part of my duties, as part of the wind-down staff in the Bush-Quayle 1992 committee, it was that I had to go over to the White House and deal with Tom Hubbard, who is a holdover from the Bush administration, and I would occasionally, two times, went into the White House during 1993 and parts of 1994. I am not sure of the dates exactly. I was cleared then by Tom Hubbard.

Senator BROWN. So, at least for your circumstances, it is possible someone could have considered a need for you to have access to the White House.

Mr. CRAIG. Yes. Well, I had to be cleared in order to get the manifest list to Tom Hubbard to make sure we can get the bills paid for Air Force One.

Senator BROWN. Anyone else? No?

Thank you.

The CHAIRMAN. Thank you, Senator Brown.

Senator Thompson, please.

Senator THOMPSON. I will switch with Senator Kyl, if I may.

The CHAIRMAN. Senator Kyl.

Senator KYL. Mr. Chairman, I appreciate Senator Thompson yielding because I am going to have to preside at 1 o'clock, and therefore, I really appreciate that.

Let me just make a point first and then ask basically one question. I do think it is important to note that the priorities of the White House, at a minimum here, were wrong; that in March 1994, which is well over a year after all of the people in the administration began to work for the new administration, that it was reported by Mr. William Kennedy that more than 100 Clinton political appointees at the White House had still failed to submit the paperwork to even begin their own FBI investigation, and this was the subject of a GAO study that released its findings in October 1995, raising significant concerns about this.

So the point here is that the White House obviously should have been attending to business, the priority business of getting its own people cleared more than a year after many of them had started working there rather than dealing back in time with Bush appointees. I thought it was important to make that point.

Now, the other basic question that I wanted to ask has a couple of different parts. A question was asked of you if any of you know for a certainty that your files were actually reviewed. Well, is there any way any of you could know that?

Ms. MCBRIDE. No.

Ms. CARROLL. No.

Senator KYL. Do any of you know anything about this other than what you have read in the newspapers?

Ms. MCBRIDE. No.

Mr. DALE. No.

Ms. CARROLL. No.

Senator KYL. Let me draw an analogy here. Well, first of all, let me ask you this. From what a couple of you have testified, it appears to me that part of your concern is what you don't know.

Ms. MCBRIDE. Right.

Senator KYL. You don't know who has information or who might have reviewed the files.

Ms. MCBRIDE. Correct.

Senator KYL. And that doubt itself is a concern to you. Is there anyone that would disagree with that?

Ms. MCBRIDE. No.

Mr. DALE. No, sir.

Ms. CARROLL. That is right.

Senator KYL. The analogy I was going to raise is it is kind of like the peeping tom. The cops catch a guy outside your window, and you have taken a shower and you are walking around without any clothes on. You don't know for sure whether he saw you, but that doesn't make you feel a whole lot better about it.

Senator BIDEN. Good analogy.

Senator KYL. Then we do know from newspaper accounts that at least one individual, at least this is what is reported, it is reported in some newspaper accounts that Mr. Marceca did review all the files through letter G, and he only found derogatory information on three people.

So the implication there clearly is that at least one person did review all of those files. So all of you come through the letter G in the alphabet, and therefore, presumably, except for Mr. Craig whose file may not have been delivered, did have your file reviewed by at least one person. That appears to be a fact.

So it is kind of like, well, now I know at least the peeping tom saw me. What I don't know is if he took any pictures of me and shared it with somebody else. So you still have a problem here.

Now, we also know that there was something like 18 interns—I am not sure exactly how many—who had access to this same place, and nobody apparently knows yet whether anybody just for kicks or for any other reason decided after hours let us go in and read some of these files, it might have some juicy material in them. So you don't know that either.

I guess I will just ask the question. Finally, is it, in fact, this lack of knowledge that is one of the most distressing things? Who might show up sometime in your future with the most private information about you, and you wouldn't have a clue about it?

Ms. MCBRIDE. Yes, sir.

Mr. CRAIG. Yes.

Senator KYL. Well, I really appreciate what you have brought to us here. There will be many other people that can testify to the other information that needs to be gathered here, and perhaps some who somebody would really have a reason to dig up dirt on, other than Mr. Dale who clearly is in a different category here, but I think at least we have established one thing, and most of us here, I think, have agreed that whether it was a mistake or not, the doubt that exists in your mind and the knowledge of what is in those files that at least you have some knowledge of—you may not know everything that is in them—

Ms. MCBRIDE. Right.

Senator KYL [continuing]. The knowledge that that information might have been shared with others is a clear invasion of your privacy, and again, as Senator Biden said, it is not within our power to apologize for others, but we certainly do on behalf of the Government apologize, and I think we are all committed to try to do what

we can to prevent this kind of thing from happening to others in the future.

I thank you very much for willing to be here.

Ms. McBRIDE. Thank you.

Ms. CARROLL. Thank you.

Mr. DALE. Thank you.

Senator SIMPSON [presiding]. Thank you, Senator Kyl.

Senator Thompson.

Senator THOMPSON. Thank you.

Just following up on Senator Kyl's points that he made, concerning this individual, Marceca, it is true, there have been several accounts, where he has said apparently that he has read every file. So who is this individual who you know has read your file?

Apparently, he is a part-time civilian employee of the U.S. army—he was brought in on a part-time basis—whose qualifications are that he worked in several Democratic political campaigns.

He, apparently had no security qualifications. We don't even know if he had security clearance at this particular point.

I think maybe he has gone back to his civilian work now. So whoever he is, and we will find this out later, we know that at least that individual apparently was a personal friend of Mr. Livingstone, and that is how Mr. Livingstone got him. Mr. Livingstone asked him, sought him out to personally handle this job because they both worked in these several Democratic political campaigns together.

Well, who is Mr. Livingstone? Mr. Livingstone says apparently that he didn't see any files or maybe he only saw three files, but we also read, and we will get to the bottom of this, I suppose, that he used to work for Mr. Thomaso, and the allegation is, anyway, that they did what they did to you, Mr. Dale, to make a place for Mr. Thomaso and his people over there. Is that right?

Mr. DALE. That is my belief.

Senator THOMPSON. Do you know anything about the relationship between Mr. Livingstone and Mr. Thomaso?

Mr. DALE. No, sir, I do not.

Senator THOMPSON. Were you aware of the fact that he used to work for Mr. Thomaso?

Mr. DALE. No, sir.

Senator THOMPSON. Well, I think it is important to know that we are talking an awful lot about these lower-level, so-called employees, but as the chart indicates up there, these people are part of the White House counsel's operations. I mean, this is not any side deal. These other White House counsel who have testified over on the House side, I think, laid it out; Mr. Culvahouse, Mr. Gray, and all of that.

Sure, they used the stamp sometimes with the counsel's name on it. I believe one did. Maybe one didn't, but they knew what was going on, and they accepted responsibility for what is going on.

Mr. Livingstone apparently never saw any of these files, or maybe three. I can't tell from the reports yet.

Mr. Kennedy doesn't know anything about anything.

Mr. Nussbaum certainly never heard of any of this.

So we have got this part-time civilian Army employee, whose qualifications have to do with politics and not security, as appar-

ently being the only fellow who is really involved in this, and people wonder why we are a bit skeptical.

It was interesting to me to note when it first became revealed, Mr. Dale, that your file had been requested 7 months after you had left employment; that Mr. Stephanopoulos was outraged, and in his defense, he said that it was obvious that we weren't after Mr. Dale because we actually requested over 300 files improperly, and demanded an apology from all those who had been critical.

I read in the FBI report that you weren't the only White House employee who was discharged whose file was requested; that Mr. Barnaby Brasso—is that his name?

Mr. DALE. Yes, sir.

Senator THOMPSON. Mr. John Paul Dreylinger.

Mr. DALE. Dreylinger, yes, sir.

Senator THOMPSON. I find it interesting that those are early letters in the alphabet, also. Yours and Mr. Dreylinger's start with a D; Mr. Brasso's with a B. In this particular group of files, they got all three of you with one fell swoop, didn't they, as far as requests were concerned?

Mr. DALE. Yes, sir, but I guess the question that keeps coming back to my mind is how did my file end up in the Travelgate investigation.

Senator THOMPSON. Well, expand on that a little bit. I recall you mentioned that earlier.

Did you discover this when your attorney got access to it?

Mr. DALE. No, sir, I discovered it when Mr. Clinger got access. My FBI file was included in the 1,000 pages that he got the last time the White House delivered documents to him, and that is where it was discovered.

Senator THOMPSON. That really started this whole inquiry.

Mr. DALE. Yes, sir.

Senator THOMPSON. What did that file of 1,000 pages supposedly represent as far as you know?

Mr. DALE. Well, it represented the files that he had requested and his investigation of the Travelgate scandal, and if I understand correctly, there was also a catalog in that, a catalog of the other 2,000 documents that said that they had Barnaby Brasso's FBI file, also.

Senator THOMPSON. What is your point exactly? Is your point that someone above Mr. Marceca saw these files?

Mr. DALE. My point is that the White House's defense has always been that nobody saw these files. They came to the White House, and this detailee read them. They went into a safe, and no one else saw them.

Well, I think it is quite apparent that my file did not go into the safe. It was forwarded on to someone else, and everybody who has been involved in the Travelgate investigation at the White House conceivably could have seen that file.

Senator THOMPSON. So it doesn't cause you to rest easy to know that your file was for about a year, I guess, in an office over at the White House.

Mr. DALE. Yes, sir. Closer to 2 years.

Senator THOMPSON. Closer to 2 years.

Apparently, after somebody else came in and saw that they improperly had those files, instead of turning them back in, they took them to the White House archives, supposedly, which I understand is in the same office as the personnel security.

Mr. DALE. Well, yes. I wondered where the archives is.

Senator THOMPSON. I understand it is in the same room in another safe.

Mr. DALE. I think it is the same safe, maybe just on the other side.

Senator THOMPSON. OK. I think Senator Kyl made the point that in this era of victim rights, it is kind of interesting to require you to come in and prove all the ways you have been damaged.

I guess we know in 1993 that the same administration received and disseminated information from files from two Bush political appointees, a big flap about that. They got caught. They got caught. I don't think we ought to be relegated to being critical of only those who have got caught.

Yet, you don't know and you will never know to what extent you were targeted, and almost all of you clearly were not targeted as such. As for some kind of an enemies list, that is a diversionary tactic. That fact does not eliminate the fact of not only incompetence at the best, but the distinct possibility that there were certain individuals, three at the travel office, you and your two colleagues, perhaps—

Mr. DALE. Yes, sir.

Senator THOMPSON [continuing]. And the other high-level appointees whose files were sought. Newt Gingrich's press secretary was one of the files that they had apparently over in the White House for about a year, after they discovered that they should not have had it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator DeWine.

Senator DEWINE. Mr. Dale, let me follow up on the line of questioning that Senator Thompson began. I want to go through some dates and make sure I have got the chronology correct, and if you could just let me go through this, and if any of these dates to your knowledge are incorrect, you can stop me as we go through.

May 19, 1993, you were fired. At that time, the White House said that there was evidence of mismanagement in the office, and that the FBI was being called in.

July 2, 1993, the White House again talks about there is going to be an internal management review, and then says that the travel office had severe management problems, "We did the right thing, but the wrong way."

December 20, 1993, the White House requested your file.

January 6, 1994, the background report is delivered to the White House.

You were indicted December 1994 and then acquitted November 16, 1995.

Are those dates correct, to your knowledge?

So, from May 19, 1993 until December 20, 1993, when the White House requested the files or your file, is a 7-month period of time. No indictment had taken place at that point. Is that correct?

Mr. DALE. That is correct.

Senator DEWINE. Yet, the White House had been saying, and has said from the day that you were fired, that there was evidence of mismanagement and had made the fact known that the FBI had been called in. Is that correct?

Mr. DALE. Yes, sir.

Senator DEWINE. What was going on in December of 1993 as far as your case was concerned? Were you aware that you were under criminal investigation at that point?

Mr. DALE. Oh, yes, sir. I was aware that the FBI was going through all of my financial records, all of my children's financial records and everything up until then.

I was notified somewhere around the middle of February that the FBI expected to hand down an indictment.

Senator DEWINE. That was the first time that you got that definitive word from them.

Mr. DALE. Yes, sir.

Senator DEWINE. For the general public, for that 7-month period of time, there was no evidence that there was going to be an indictment, and there is nothing to validate at that point the White House's charges that they had made when they fired you.

Mr. DALE. That is right.

Senator DEWINE. So, in a sense, the merits, the validity, the reason for the firing was still up in the air. In a sense, once the indictment comes down, it at least for a time validates what the White House said when you were fired. Of course, then when the jury comes back after less than 2 hours and acquits you, that is an entirely different ball game.

Mr. DALE. Yes. I think the way that I put it one time, it took the pressure off the White House once the indictment was handed down, but once the acquittal came in, the pressure went right back to the White House.

Senator DEWINE. So, Mr. Dale, when they requested this file in December 1993, that had not occurred, though. That indictment had not occurred at that point.

Mr. DALE. That is correct.

Senator DEWINE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Abraham.

Senator ABRAHAM. Thank you, Mr. Chairman. I appreciate that the panel has been here for quite a while. So I will try to wrap up fairly quickly.

I think, Mr. Chairman, that there has been the implication here that there is only a serious problem somehow if somehow there was a plan that was premeditated to create an enemies list or something of the kind.

I tried to stress in my earlier statement that I think gross negligence on the part of anyone who is entrusted with these kinds of responsibilities is in itself a very serious problem, but I also think that it is a fairly serious problem if the people who are in authority, the people above those who were at the actual operations level, failed to act appropriately when it was discovered that these activities had gone on.

So the question I have is about how the White House handled a possible violation of the Privacy Act, when in early 1994, I guess, it was discovered that these files had been requested and, evidently, according to his very own statement, from Mr. Marceca, had been read at least by him, if not others.

I guess I would ask the panel, what would you have expected your Presidency or the White House to do when they came upon the discovery that these file requests had been made and that the White House was, in fact, in possession inappropriately, it would seem, of hundreds of files of individuals for whom they had no purpose to be there?

Ms. MCBRIDE. I should have been fired immediately if I was responsible.

Senator ABRAHAM. Does anybody else want to reply?

Mr. CRAIG. I would think they would take it upon themselves to realize that they have made a mistake and send it back immediately, or at least notify somebody in charge that, hey, we have got a big mistake here, we have got a bunch of people from the Bush White House and it is not appropriate for us to look at it.

The fact that they continued to look through hundreds of files and waste taxpayer money in man-hours and in copying and whatever the delivery of the documents cost is ridiculous.

Ms. GOBER. Or to keep them for 2 years.

Senator ABRAHAM. Mr. Dale. Anybody else.

Mr. DALE. I think if it had been my office, they would have been returned to the FBI immediately.

Senator ABRAHAM. Well, then let me ask you, what is the statement made to you as a victim in this that after this was discovered, nothing was done by the White House to the people who oversaw this project, and that now Mr. Livingstone has been placed on administrative leave with pay? What is that statement to you?

Ms. GOBER. I don't think it would have been like that in the Bush White House, and it makes me question the Clinton White House, the way they are handling lots of different issues these days.

I don't think Mr. Livingstone was put on administrative leave until the letter was sent asking him to be put on administrative leave.

Senator ABRAHAM. Well, I believe it just happened very, very recently.

Ms. GOBER. Right. And I think it was after, though, that we asked them to put him on administrative leave, and with pay. I mean, now he is on paid vacation.

Senator ABRAHAM. Does anyone else want to comment?

Mr. CRAIG. I guess it doesn't bother me as much that he is on administrative leave until we find out if he had some bad intent, but if we find that, then it is obviously troubling that that took place.

Ms. MCBRIDE. Senator, I would just like to be assured that somebody understands how serious the nature of these files, the confidentiality, all the information contained in them, that they understand how important that is.

Mr. DALE. Senator, over my years at the White House, I am personally aware of cases when we were out on the road traveling

with the President, if one of the White House communications personnel goofed up on the trip, I know that orders were cut to have him transferred out of the White House before he ever got back to Washington. That is how serious other White Houses and administrations took goof-ups like this.

Senator ABRAHAM. Mr. Chairman, I don't want to continue. I have an array of additional questions which go along the same lines, such as why such a delay between when the discovery of this occurred and any change in the process. Now we are being told that the process is being changed. Somebody new is being brought in, but it seems to me 2 full years have elapsed. Obvious problems occurred a long time ago, and I guess I just seriously question the reason for this delay, the reason that the people who oversaw the project were not scrutinized at the time that the discovery of these file requests was originally made. It just seems to me that that is a very serious breach of the responsibility not of the people in the operations level, but in the people above them, in the counsel's office and elsewhere in the White House, who I think have to assume some responsibility for the handling of this matter.

Now, whether or not there was malevolent intent in securing the files in the first place, in my view, is only part of the question. There is a separate question of how, once the discovery was made, the White House chose to respond. It just seems to me that we have had a lengthy delay and very little response in either investigating it more fully or in dealing with people who have obviously engaged in conduct which is, at best, grossly negligent.

Thank you.

The CHAIRMAN. Thank you, Senator.

Senator Biden does have some questions. So we will give him a few more minutes to comment.

Senator BIDEN. I just have a few more questions to kind of wrap up my thinking.

By the way, Ms. McBride, you are a really good witness.

Ms. MCBRIDE. Thank you.

Senator BIDEN. You ran the personnel office?

Ms. MCBRIDE. Correct, the White House personnel office.

Senator BIDEN. White House personnel.

Ms. MCBRIDE. Right.

Senator BIDEN. So let me ask you a question. I want to know how other White Houses worked. When the people whose names you had, White House people you were, I guess, responsible for—

Ms. MCBRIDE. Responsible for, sure.

Senator BIDEN [continuing]. Did all of them have an FBI file?

Ms. MCBRIDE. They would have one, sir, yes.

Senator BIDEN. They would have one.

How did it work in the Bush administration? Or I guess you were there with Reagan, too.

Ms. MCBRIDE. Yes.

Senator BIDEN. How did it work? Did somebody in the Reagan administration ask the FBI to do a file on—I will try to pick a name. I hope there is no Charlie Smedlap. Charlie Smedlap. Charlie Smedlap is going to come and work in the press office.

Ms. MCBRIDE. OK.

Senator BIDEN. Now, somebody in the Bush administration, I guess the legal counsel's office, or the Reagan—would ask the FBI—can you put that thing back up, that form—would send a form over. I mean, don't testify to this if you don't know how it worked.

Ms. MCBRIDE. OK, sure.

Senator BIDEN. You seem to know.

Would they have sent a form like that over to the FBI saying to FBI from White House counsel—in that case, it would have been Boyden Gray or whomever—re Jack Smedlap? We want a field investigation done because we want to hire him.

Ms. MCBRIDE. OK. Senator, I can tell you that that particular form is one that I would not see because that would be within the counsel's office.

Senator BIDEN. OK.

Ms. MCBRIDE. From my office, if the press secretary to the President wanted to hire Mr. Smedlap, he would submit, or they would submit two documents to my office, a request to bring that person on board, call to request for personnel action. Attached to that would be a request for at least the name check for that person.

Senator BIDEN. Name check, that is, FBI look into it.

Ms. MCBRIDE. Right.

Senator BIDEN. OK.

Ms. MCBRIDE. That piece of paper, which would be the only piece of paper my office would ever see, would have very basic information, their name, address, date of birth.

Senator BIDEN. That would assure you that there has been a request for a background check.

Ms. MCBRIDE. That would be sent from my office immediately to the security office, and then the security office, then reporting to the counsel to the President—

Senator BIDEN. Would then send it to the FBI?

Ms. MCBRIDE [continuing]. Would begin the name check process. Right.

Senator BIDEN. Got you. OK.

You all are aware that in the administrations you worked in, somebody read your FBI file, right?

Ms. MCBRIDE. Absolutely.

Senator BIDEN. Did that offend you even then to know that somebody read your FBI file?

Ms. MCBRIDE. No. I knew that was a condition of my employment there that someone would investigate it and determine if I was suitable for an appointment at the White House.

Senator BIDEN. But you knew someone had to read it—

Ms. MCBRIDE. Right.

Senator BIDEN [continuing]. In order to know whether or not you should or shouldn't be hired, right?

Ms. MCBRIDE. Absolutely.

Senator BIDEN. By the way, I am offended by that, even though I know it has to be done. I mean, I am offended they asked such dumb questions.

I am offended this committee asked such dumb questions of judicial nominees. Some of them we ask, I think are totally irrelevant to whether or not the nominee can do the job, but at any rate, the

offense part here is, at least there I assume the reason why you weren't offended, you had a high degree of confidence that only one person was going to read it, and you trusted that person. You just assumed it would be a trustworthy person, right?

Ms. MCBRIDE. It may be more than one person. It would be people.

Senator BIDEN. But at least one would have had to have read it, right?

Ms. MCBRIDE. Right.

Senator BIDEN. The reason that didn't offend you is that it wasn't a violation of your privacy in the sense that you knew it was a condition of employment—

Ms. MCBRIDE. Right.

Senator BIDEN [continuing]. And you knew someone would read it, and you just assumed that someone would read it and would not dispense it to anybody—

Ms. MCBRIDE. Correct.

Senator BIDEN [continuing]. Even though someone would have it, right?

Ms. MCBRIDE. Correct.

Senator BIDEN. Do all of you agree with that?

Mr. DALE. Yes.

Mr. CRAIG. Yes.

Senator BIDEN. Now, the offensive part here is to you all, and I want to get this straight, and I would be offended, but at any rate, the offensive part here is somebody else asked for it. Somebody else read it. At least one other person had to read it. I mean, there is no purpose to ask for it unless you get to read it if the purpose was to determine whether you were a holdover or not.

Assume for a moment that it was a legitimate intent. Assume it was a legitimate mistake, just for the sake of discussion. The offensive part here is that you didn't want a job. So there was at least one extra person reading the stuff you didn't like anybody reading, and for no purpose. The legitimate purpose to read it is you want a job, right?

Ms. MCBRIDE. That is what we were counseled on. Right.

Senator BIDEN. I just want to make sure I got it straight.

Ms. MCBRIDE. Sure.

Senator BIDEN. Now, the part that offends me here—me, not you. They didn't read my file. They just opened the New York Times to read my file, I guess, but they didn't read my file or any newspaper. They didn't read my file, but what offends me here is the people who read the file, at least the one person who asked for the file, does not have an overwhelming case for a great security background area. So that makes me uneasy. That is the part that bothers me, if I were you.

Now, if the person that read your file had been a former head of the FBI who was appointed by a Republican administration and was a solid person, I wouldn't be as worried because I would think the person at least was competent who read my file.

Ms. MCBRIDE. I would still be offended by that. If I was not seeking employment, that person had no right to it.

Senator BIDEN. So it goes to whether or not why they asked for your file in the first place.

Ms. MCBRIDE. Why they have it at all.

Senator BIDEN. OK. Now, the second point, Mr. Dale, there is a lot of talk about legitimate discussion about when your file was asked for, when it wasn't, what your state of affairs was relative to the White House, being fired, not fired, fired, investigated, indicted, not indicted, investigations going on.

One of the things that had been raised on the floor of the Senate, I want to ask you about. Did you ever make a written offer to the Justice Department agreeing to plead guilty to a felony?

Mr. DALE. No, sir. The plea bargain said that I would agree that checks went into my checking account that should not have gone, but I would not plead guilty that they were used for my own personal use.

Senator BIDEN. But were you willing to plead guilty to anything?

The CHAIRMAN. Joe, this is completely irrelevant to this hearing. I don't think you should get into that type of stuff. He has been through enough without that. My gosh.

Senator BIDEN. The only reason it may or may not be relevant is what the purpose was here behind asking for Mr. Dale's file.

The CHAIRMAN. No.

Senator BIDEN. Was Mr. Dale one of the people whose name appeared in a list that was alphabetical? It is making it out to be that there was no reason for any—let me back up. I will withhold the question. Let me ask it another way.

The CHAIRMAN. Yes. I think you should withhold that.

Senator BIDEN. Let me ask it another way and ask another question.

Your attorney surely is aware—I am positive he has to be or else he wouldn't be a competent attorney. He is aware that the prosecutor, once you were indicted, had under the Privacy Act the right to get your FBI file, and it was certain that they would. No prosecutor wouldn't do that. That is automatic. There is written into the law, the Privacy Act, which prevents people from being able to see your file. If you are indicted, a prosecutor has access to that.

So what confuses me here is, if we already know the prosecutor who is taking you to court has the right to get your FBI file as a matter of law, why would there be an additional attempt to get your FBI file by the same outfit?

Mr. DALE. Senator, the FBI has authority to do a lot of things that I didn't know they have until they took me to court.

I thought it was very interesting that my attorney told me after the trial, it is amazing the FBI knew everything about you and your family, but yet they knew nothing about the Dale family. Now, what he meant by that—

Senator BIDEN. I am sorry?

Senator FEINSTEIN. We missed that.

Mr. DALE. What he meant by that is on paper. They knew everything that could be known about us, but they didn't know the true Dale family.

Senator BIDEN. By the way, I think that is a valid statement to make. That just reinforces the point I am making. They had access under the law for all the stuff that was in your file, and unredacted. They had access to all of that.

Mr. DALE. Absolutely.

Senator BIDEN. So I guess the confusion I am having here—because what everyone from Senator Specter to Senator Feinstein, what everybody says is we have two missions here. One, it is clear that there was stupidity involved, at a minimum, and whether or not it went beyond that, which you believe it did in your case, it went beyond stupidity, you believe it went to doing you harm, specifically zeroing in on you to do you harm.

I am confused if under the law the same outfit that from your perspective and others were unjustly pursuing you, if they had the right to have that anyway, why would they make a second request for it. Do you understand the point I am trying to make? I wonder what your view of that is.

Mr. DALE. Well, I think that there is a clear distinction between the White House and the Justice Department.

Senator BIDEN. Well, you never made it so far. The point you are all making here is, on the floor of the Senate, we should pay your attorney fees because the administration—the administration wrongfully—wrongfully prosecuted you. You don't make a distinction there.

The CHAIRMAN. Let us understand. He hasn't come to me and asked me to file that bill. I filed it because I saw a wrong. He didn't ask me to do that.

Second, there is a difference between a prosecutor having access to an FBI file and the White House, 7 months after they fired him, and start to indict him and start to persecute him, and I might add given to two political hacks who were chosen by the White House. There is more than just stupidity here. We have two political hacks chosen by people in the White House, and you can see the quality of the people who served in prior White Houses.

Senator BIDEN. Senator, my point is not to make a judgment. It is to go to motive. It is to go to motive.

The CHAIRMAN. How is he going to know what their motives are?

Senator BIDEN. Well, he is not. That is why we have to apply the standard of a reasonable man to determine what the motive was.

If I already had your file or I knew I could legally get your file, why would I illegally try to get your file?

Senator THOMPSON. Senator, could I ask a question?

Senator BIDEN. Yes.

Senator THOMPSON. Does the Senator draw no distinction between a prosecutor on the one hand and a part-time Army employee with no qualifications inside the bowels of the White House on the other hand?

Senator BIDEN. I absolutely draw a distinction.

Senator THOMPSON. Because if the prosecutor can get it, why not give it to this other guy?

Senator BIDEN. I absolutely—well, do you want me to answer the question, Senator?

Senator THOMPSON. And the fact that the White House got it before there ever was an indictment.

Senator BIDEN. Do you want me to answer the question, or do you just want to—

Senator THOMPSON. If we are going to go through another round of this, we can't sit here and listen to this line of questioning.

The CHAIRMAN. Let us wrap it up.

Senator THOMPSON. Without our time, also, it will take the rest of the day.

Senator BIDEN. All I am asking is a question.

What I am trying to establish here is, to find out what the motivation for this seeking the names were. On the one hand, you have a list, and there are 400-and-some people on the list. Where is that list? It is in alphabetical order, on the one hand, and Mr. Dale's name appears at 300-and-something, OK?

Now, if, in fact, Mr. Dale had never been indicted or Mr. Dale had never been fired or Mr. Dale had never been involved in this process, then we would be looking at it like we look at all other names, and all I am trying to find out is, (A), when was the file in addition to this request, when was one made, and does it make a difference if they already had the file, the same outfit, meaning the administration. I am just trying to get a chronology here. That is all.

I will come back to it later.

The CHAIRMAN. Does counsel want to respond?

Mr. TABACKMAN. I might be able to help the Senator on this. Again, Steven Tabackman.

Senator, it was clear to us throughout the course of the case, and I didn't get in the case until August 1994, that there was a very clear independent interest within the White House counsel's office as to how the Department of Justice was handling the case. We became aware of that.

So, while, again, I don't know and I don't purport to know what the reason was for the request on December 20, 1993, 1 year almost before Mr. Dale was, in fact, indicted—

Senator BIDEN. Right. That is the list I am referring to.

Mr. TABACKMAN [continuing]. It is not at all unreasonable to believe that there were folks in the White House who were interested in seeing these documents, so that they could go to the Justice Department and say have you looked at this.

I mean, one of the things they were concerned about, and I will end in 1 second—

Senator BIDEN. No, go ahead.

Mr. TABACKMAN [continuing]. Was Mr. Dale's spending patterns. As you know, the FBI asks everybody in your neighborhood have you seen any indications of unusual spending. We asked for the request. We requested the files because we knew what the answer to that was.

The agents in the FBI, who are no longer in the FBI, who had conducted those background checks had told us what the answer was, and that is why we wanted them because we wanted to put them in evidence to refute the charge of embezzlement, but it is not unreasonable to believe that people who were trying to support that notion in December 1993, when there was a lot of heat about what wasn't happening to Mr. Dale, the indictment hadn't come down, were interested in knowing that.

Senator BIDEN. I agree with you. It is also not unreasonable to believe that this was purely a mistake. Both are not unreasonable to believe. One of them is true, and that is the only purpose of my question. It is clearly not unreasonable to believe that.

It is also not unreasonable to believe that when 481 names listed in alphabetical order, requests being made at dates based upon the number of names that could be processed per day, it seems to be, it is not unreasonable to believe it could have been innocently placed there. That is all I am trying to ask about.

The CHAIRMAN. OK. Well, you have made your point.

Senator BIDEN. OK.

The CHAIRMAN. We are going to have to end it at that, but let me just say this. It is easy for me to believe it when the name Billy Dale is there because we have seen a persecution here that is second to none I have seen in a long, long time in my lifetime.

Senator BIDEN. Well, Senator, that is—

The CHAIRMAN. And frankly, Billy Dale has been vindicated, and we ought to pay his legal fees, and that is my decision, not his. He didn't ask me to do this.

Senator BIDEN. Well, Mr. Chairman, just to make sure we understand why I am asking this, why I asked the first question—I am not asking you to answer this now, but why I asked the question—

The CHAIRMAN. OK.

Senator BIDEN [continuing]. You characterized Mr. Dale's prosecution as a persecution. He didn't characterize it that way. You do and you always do, and you believe that and I respect that.

If, in fact, Mr. Dale—and I don't know the answer. The reason I asked the question, if, in fact, Mr. Dale had agreed to plead guilty to a felony, then that would undercut the notion this was a persecution. That is why I asked the question.

Mr. DALE. I never agreed to that.

Senator BIDEN. That is why I asked the question. Fair enough. That is all.

Mr. DALE. Also, I think that you should know that—forgive me if I can be very suspicious about the things that has happened to me because—

Senator BIDEN. I don't blame you for being suspicious.

Mr. DALE [continuing]. Just in the last week, I have cleared up with the Internal Revenue Service what I have been going through with them, not only the FBI, not only being taken to court, but with the Internal Revenue Service. Wouldn't you find that very suspicious that all of a sudden your income tax returns are being audited?

Senator BIDEN. Mr. Dale, if I were you, I would find everything suspicious, and I am not being facetious. I just want my staff and a man I respect greatly, Senator Thompson, to understand why I asked the question.

The CHAIRMAN. All right. I think we do.

Senator BIDEN. That is the reason why I asked.

The CHAIRMAN. We do. I think we do.

Senator BIDEN. I thank you for the answer.

The CHAIRMAN. I am just going to end it with this. Do you feel you were persecuted by this White House?

Mr. DALE. Oh, yes, sir.

The CHAIRMAN. I do, too.

Mr. DALE. Absolutely.

The CHAIRMAN. I think that what has happened here—if they had people like Anita McBride and Mary Kate Carroll there watching these files, I don't think we would be here today.

Mr. DALE. I know we wouldn't.

The CHAIRMAN. OK. Well, then, we appreciate the testimony of all of you. I think you have done the committee a great service. You have helped us to understand this better, and frankly, we appreciate you coming in here today. So, with that, we will let you go. You have been very patient, and you have been here a long time, but we appreciate you being here.

Ms. GOBER. Thank you.

Mr. CRAIG. Thank you, Senator.

Ms. McBRIDE. Thank you.

Mr. DALE. Thank you.

Ms. CARROLL. Thank you.

The CHAIRMAN. Thank you so much.

Senator BIDEN. Thank you very much.

The CHAIRMAN. Our second panel has two witnesses. The first is Mr. Howard Shapiro. Mr. Shapiro is the FBI general counsel and the author of the FBI's report on the X files incident.

Our second witness is Mr. Robert Miller. He is the Assistant Director for Protective Operations of the U.S. Secret Service.

If I can get both of you to stand and take the oath.

[Witnesses sworn en masse.]

The CHAIRMAN. Mr. Shapiro, we will turn to you first.

PANEL CONSISTING OF HOWARD M. SHAPIRO, GENERAL COUNSEL, FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC; AND RICHARD MILLER, ASSISTANT DIRECTOR FOR PROTECTIVE OPERATIONS, U.S. SECRET SERVICE, WASHINGTON, DC

TESTIMONY OF HOWARD M. SHAPIRO

Mr. SHAPIRO. Thank you, Mr. Chairman. Thank you for the opportunity to come and testify here today, and I commend you and the rest of this panel for having these hearings on this important matter.

The CHAIRMAN. Thank you for coming.

Mr. SHAPIRO. I am going to read just a brief statement and would ask that the report I prepared last week be submitted for the record together with the written—

The CHAIRMAN. Without objection, we will put the report in the record.

Mr. SHAPIRO. Thank you, sir.

[The report was not available at presstime.]

Mr. SHAPIRO. For more than 30 years, the Federal Bureau of Investigation has been providing background investigation reports and other information to the White House upon request. After examining this process, I concluded that the FBI has failed through the years to afford sufficient protection to the privacy interests of those whose files we maintain. It is our duty and our responsibility to do so. The integrity of the system and the cooperation of the American people depend upon it.

Unfortunately, in striving to rapidly and efficiently respond to requests from the White House and other agencies, we were not sufficiently attentive to our own responsibilities to safeguard the information in our files against negligent or intentional misuse by others. As a direct result, the FBI disseminated background information relating to more than 400 individuals without insisting on proper justification and for no apparent official purpose.

This was a massive invasion of privacy which Director Freeh severely criticized and publicly announced will not be tolerated. Without hesitation, he took full responsibility and immediately implemented a series of procedural changes to assure that such infringements of privacy never recur. Last Friday, these changes were approved by Deputy Attorney General Jamie Gorelick and are now in place.

I began my inquiry on June 5, 1996, at the instruction of Director Freeh, after he learned that the White House had, in December 1993, sought background information relating to Billy Ray Dale several months after he had been fired. The following day I learned from the White House that they were in possession of additional FBI records obtained in the same manner. I sent my deputy and an FBI inspector to retrieve what turned out to be folders of background information relating to 33 individuals. By June 13, additional investigation revealed that the White House had improperly requested previous reports relating to a total of 407 individuals.

The CHAIRMAN. Mr. Shapiro, let me interrupt you right at that point, because I think it is important.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. I just want to ask you one question. Much has been made of the assumption that all that those White House officials had received were summaries or FBI file summaries. Now, I have correctly noted that a summary contains the same private matters the full field file contains, but just to clarify, was any raw material or copies of portions of the full field file, that is, interview reports, were any of those attached to the improperly acquired FBI summaries?

Mr. SHAPIRO. Yes, sir. The answer to that is yes.

The CHAIRMAN. Could you elaborate on that? Because I think that—you know, these people act like these FBI summaries are just nothing. Actually, they are not the full thick file, but they sure as heck are something, and they are pretty doggone important and clear.

Mr. SHAPIRO. Let me be as clear as I can on that.

The CHAIRMAN. If you can, I would appreciate it.

Mr. SHAPIRO. As you know, it has only been 2 weeks, but we have been working through these files as assiduously as we can.

The CHAIRMAN. Right.

Mr. SHAPIRO. Of the total number of files—and let me correct the number first. We have been saying 408 files. There were 408 files. But there was a duplicate, so it is 407 individuals. Six of them included, in addition to the summaries, SF-86 reports, the initial reports that are submitted for employment in the U.S. Government. Several others, many others, contained one or more FBI 302s, and to the best that I can, let me explain how that would have occurred.

If the previous summaries were prepared in response to a name check request, or if a particular 302 was considered to be very salient and very dispositive in resolving a central issue in a background, that 302, or in some cases maybe more than one 302, would be appended to the summary investigation itself. When these requests, which were all for previous reports, were processed, whatever had been disseminated before was disseminated again. So if the earlier summary reports had 302s appended to them, then those 302s were once again sent back.

The CHAIRMAN. Do you agree with me those summary reports are significant reports?

Mr. SHAPIRO. Oh, yes, sir. I don't mean to trivialize—

The CHAIRMAN. And they cover the dirt as well as the good.

Mr. SHAPIRO. Yes, they do. In fact, it is the intent of the summary reports to reflect in them any significant derogatory information. So that is absolutely right.

The CHAIRMAN. Well, thank you. I think that clarifies that, because I was a little amazed at some of the arguments made here today by my colleagues that, after all, these are just summaries. Those summaries are pretty doggone elucidative. They are pretty doggone important. And they can smear people.

Mr. SHAPIRO. The summaries are very important.

The CHAIRMAN. In the wrong hands.

Mr. SHAPIRO. Absolutely.

The CHAIRMAN. Yes. OK. Thank you. Keep going. I am sorry to interrupt you.

Mr. SHAPIRO. Thank you, Mr. Chairman.

It now appears that the requests relating to these 400-plus individuals were part of a larger series, comprised of at least 480 requests submitted to the FBI in early perfect alphabetical order between December 6, 1993, and February 3, 1994. These requests span the alphabet from Aa to Go; each sought copies of previous reports; and each provided as its justification the single word "Access."

No questions were raised by the FBI about these requests, although the unusual volume of this type of request was noted, and they were processed routinely by the personnel of the executive agencies subunit of the Information Resources Division of the FBI, consistent with the guidelines that existed at that time.

As I sought an explanation for these actions, I discovered that the system had been in place through every FBI Director, essentially unchanged since the Johnson administration, and was designed to maximize speed and responsiveness. As a consequence, the FBI processed all facially valid White House requests without reflection. Even though, as I found, the FBI had acted in compliance, in technical compliance with the Privacy Act, we had clearly failed to accord adequate weight to the protection of privacy. Over time, a tradition of considerable deference to the White House had developed, and questions were rarely asked.

It should not be forgotten that the provision of background information to the White House and other executive agencies under normal circumstances is an integral component of the Federal employment and security clearance systems. Carefully investigated and accurately reported information is essential for making determina-

tions regarding a person's suitability and trustworthiness for employment or access. The FBI personnel who process these requests for this information perform a valuable and necessary service. Nothing in my inquiry suggested any significant failure on the part of these employees.

As to their supervisors, however, I reached a different conclusion. Although I found no intentional misconduct, I found a complete abdication of management responsibility at the level of the unit chief and the executive level management as well. A policy of benign neglect cannot be tolerated in an area as sensitive as the dissemination of information from FBI files. Close and active oversight is an essential prerequisite to the fulfillment of our obligations to safeguard the information in our custody. Director Freeh has made it clear that he will tolerate nothing less.

It is incumbent upon all of us involved in this process—at the FBI, the White House, and elsewhere in Government—to achieve the proper balance between the very real and significant needs of the Government for the information contained in our files and our profound obligation to ensure that the information only be disseminated in appropriate and fully justified circumstances.

In an effort to ensure that this balance is better achieved, Director Freeh implemented a series of procedural reforms and redundant safeguards last week which will prevent negligent or improper incursions into our files and preclude any such wholesale invasion of privacy from recurring:

First, in an effort which was coordinated with the White House counsel's office, which oversees the White House Office of Personnel Security, we redesigned the manner in which White House requests for information from FBI files must be made, to require:

First, either the consent of the person whose files are being reviewed, or a letter from the counsel to the President through the Deputy Attorney General to the FBI general counsel explaining in writing why such consent cannot be obtained or should not be sought in the circumstances;

Second, that all requests reflect the actual signatures of both the requesting official and of an attorney in the counsel's office, who will have reviewed and approved the request;

Third, considerably greater specificity regarding the reason for the request; and

Fourth, that a copy of all White House requests for information be provided to the FBI Office of the General Counsel for review.

Nine other changes made by Director Freeh were approved by the Deputy Attorney General, all designed to protect against improper disclosures.

Finally, Director Freeh has instructed the FBI's Inspection Division to routinely audit the entire process to independently ensure absolute compliance with these new requirements.

A more detailed explanation is reflected in a memorandum approved by the Deputy Attorney General that has been provided to the committee and submitted for the record.

It should be emphasized that the inquiry I conducted between June 5 and June 14 was limited to an examination of the actions of FBI personnel. In deference to the wishes of the independent counsel, who was then conducting an inquiry, we did not interview

any White House personnel involved either in the request for background information generally or in the specific series of requests which occasioned my inquiry. Accordingly, neither I nor Director Freeh has reached any conclusion about the motivations of any White House employee.

On June 18, 1996, the independent counsel's office informed the Attorney General that it did not believe it had jurisdiction to investigate further the circumstances surrounding the acquisition of information from FBI files by the White House. This morning, the Attorney General announced that she has concluded that it would constitute a conflict of interest for the FBI and the Department of Justice to conduct any further inquiry into this matter. Accordingly, the Attorney General has asked the court to refer this matter to independent counsel Kenneth Starr.

The CHAIRMAN. Thank you so much. We are glad to have that information.

Mr. Miller, welcome to the committee. Happy to have you here. We look forward to hearing from you.

TESTIMONY OF RICHARD MILLER

Mr. MILLER. Thank you, Mr. Chairman. I am Richard Miller, not Robert Miller.

The CHAIRMAN. I am sorry.

Mr. MILLER. And I am the Assistant Director for the Secret Service in the Office of Protective Operations. On behalf of the Secret Service, I would like to thank you and the other members of the committee for providing this opportunity to discuss and clarify issues which concern the Secret Service White House access control system and the White House pass-holder procedures.

I would like to begin by emphasizing that the intended purpose of the White House access control system is just that—to provide a secure method of access into and within the White House complex. This access system utilized computer data bases to accomplish this.

The computers and data bases within the system at the White House are somewhat complex and difficult to describe.

Senator SIMON. I don't mean to interrupt you, Mr. Miller. But do we have a copy of his statement for members here?

STAFF. He didn't provide it.

Senator SIMON. No? OK. Thank you.

Mr. MILLER. This is not a prepared statement. This is just my notes that I wanted to introduce myself.

Senator SIMON. All right.

Mr. MILLER. In addition, some of the information concerning the system is classified. Nevertheless, I hope that by responding to your questions today I can assist the committee in understanding our procedures and the manner by which we have verified that they are operating correctly and accurately, especially as it relates to the active or inactive status of a pass-holder.

We have received questions in recent days concerning outdated lists which may have been provided to the White House personnel. It is impossible to respond specifically to any reports or inquiries without the examination of these lists. We have undertaken exhaustive efforts to review and examine our system. These efforts

continue, although to date we have uncovered no flaws which can be attributed to our passholder data base, known as E-pass, that would generate an outdated list. I will try by responding to your questions to give you an understanding of the process.

Printouts are used administratively by the Secret Service personnel in the Access Control Branch. They contribute to the successful operation and intended purpose of the system: White House access. Historically, this information has also been provided to the White House Office of Security for their duties related to the White House access and pass issuance.

I would like to introduce two of my colleagues. Seated behind me are Special Agent Larry Cumgen, who served as a project manager for the current White House access control system, and Special Agent John Libenotti, who served as the branch chief for the access control system during the time that the current system was installed. Each is very familiar with certain aspects of the system operations and procedures.

Mr. Chairman, I thank you again for the opportunity to appear before the committee, and I will be pleased to answer any questions.

The CHAIRMAN. Well, thank you so much.

Let me start with you, Mr. Shapiro.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. You have provided the committee a list called "Augments White House Name Check List," which is a breakdown of the 408 wrongly requested files.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. The list contains the names, the date the FBI received the request, when the files were returned, et cetera. Right?

Mr. SHAPIRO. It does, to the extent that information was available. As you see, for a few entries we don't have all the information.

The CHAIRMAN. Right. But almost all of the entries do have it.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. Several of these names have the phrase "charged out to" and then to whom it was charged out. Right?

Mr. SHAPIRO. Yes.

The CHAIRMAN. And the date. For example, one person's file was charged out to Craig Livingstone on June 5, 1996. What does that mean?

Mr. SHAPIRO. Well, let me tell you, to the best that I understand, what it means. Again, I will caveat my remarks by saying we didn't conduct interviews at the White House at the request of the independent counsel. However, when my deputy, Tom Kelly, and FBI inspector, David Kitchen, went to the White House on the evening of June 6 to retrieve boxes of files, which they called me to inform that they had and that they were returning to us, they went through the inventory list that was in those boxes and checked them against what was actually being turned over.

Between some of the files in those boxes, there were slips that had been inserted, colored slips, charge-out slips that said "charged out to" and a name was indicated. And that information was written down on the inventory that was provided to the FBI agents who took those documents back.

So what I have done on this form, which is a form generated by my office, is just reflect verbatim under the names where those files don't appear what it said about who they were charged out to. We have not independently verified whether those files are, in fact, charged out to whom they were.

The CHAIRMAN. OK. The bottom line is that portions of these summaries or the whole summary could be charged out at that time.

Mr. SHAPIRO. Oh, absolutely.

The CHAIRMAN. To other people in the White House.

Mr. SHAPIRO. Well, I don't know to whom, but it is clear—now, the names—of all the people whose names are on there as charged out to, I recognize, at least from the press accounts, as names of people employed in the Office of Personnel Security.

The CHAIRMAN. Right.

Mr. SHAPIRO. But I don't know what happened from there.

The CHAIRMAN. The "charged out" references are pink slips which indicate to whom the summary allegedly had been given. Right?

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. Now, do these pink slips remain in the file once the document has been returned to the file?

Mr. SHAPIRO. As best as I could tell, no. In the boxes there were only charge-out slips in those spaces missing files. I am not—I haven't personally looked through every file, but I believe that to be the case.

The CHAIRMAN. So it would not be uncommon for summaries to be taken from the vault, according to those—

Mr. SHAPIRO. Well, it is hard for me to say how common or uncommon, but it certainly did happen on occasion.

The CHAIRMAN. That means that these summaries were outside of the secure area of the vault itself.

Mr. SHAPIRO. Well, let me—

The CHAIRMAN. Or could have been.

Mr. SHAPIRO. I believe these entire boxes were outside of the vault and often in the custody of the Office of Records Management of the White House. Whether that is a secure area or not, I do not know. The ones who were charged out were brought back into—or so I am informed—the Office of Personnel Security, and I asked the White House counsel's office to confirm, and they did, that the ones they were still maintaining, they were maintaining because those were people who had a present need for access.

The CHAIRMAN. The point I am making is that there is a pink slip, they are charged out to somebody, meaning that the internal parts of that file, all or some of them, were taken by some people outside of the file itself.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. And that that was a practice that happened there at the White House, in this White House.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. And that some of them were charged out to Mr. Livingstone.

Mr. SHAPIRO. Yes. At least two, I believe, were charged out to Mr. Livingstone, possibly—

The CHAIRMAN. That you know of.

Mr. SHAPIRO. Yes, on this list, and a number of others were charged out to another employee of the Office of Personnel Security.

The CHAIRMAN. And if the material was returned, then the pink slip would be taken back, as far as you know.

Mr. SHAPIRO. As far as I know. Certainly the indication, it was sort of a place holder in the pile of files. That was removed. I have not examined each of the files enough to know whether there is any notation reflecting who might have had access.

The CHAIRMAN. Is there any permanent record in the file that would indicate when they were taken out and when they were brought back?

Mr. SHAPIRO. I don't believe so.

I just consulted with some of the agents who conducted this inquiry. At best, there are some indications it doesn't look like there was a comprehensive effort to keep that notation.

The CHAIRMAN. So no records, so you really don't know what was taken out of those files?

Mr. SHAPIRO. We don't know, but, again, let me just say, in fairness, we didn't conduct any interviews at the White House to find out, in deference to the independent counsel.

The CHAIRMAN. But I presume you will.

Mr. SHAPIRO. Well, I presume now I will be deferring again to an independent counsel.

The CHAIRMAN. I want to ask you to take a few minutes to discuss the scope of your examination of the physical evidence associated with your inquiry into the improper acquisition of the FBI file summaries. Has the FBI taken any steps to determine whether these summaries were photocopies or handled by anyone in the White House besides Mr. Marceca?

Mr. SHAPIRO. Let me say the following about that, Mr. Chairman: We have preserved the evidence for possible forensic examination. We did not conduct forensic examinations because, again, that was a matter within and possibly, again, within the scope of an independent counsel investigation. But we have handled the evidence in such a manner so that it could, for instance—

The CHAIRMAN. If the independent counsel wants the forensic investigation done, you will do it?

Mr. SHAPIRO. Absolutely.

The CHAIRMAN. It seems to me that the FBI agents assigned to the White House might be in the best position to shed light onto how this could have happened. Can you explain why the FBI in its inquiry did not interview FBI agents from the Washington field office who were or had been assigned to the White House?

Mr. SHAPIRO. Yes, sir, I can. We had, as you know, a fairly narrow charge: to investigate the turning over of these documents in response to those requests for previous reports. The FBI agents from the Washington field office, those who have offices at the Old Executive Office Building, were not at any point involved in that chain and there was no reason to believe had any particular knowledge about this.

The CHAIRMAN. I appreciate that the FBI attempts to act expeditiously when it receives requests for background checks or informa-

tion. But how can the FBI fail to question the propriety of a request late in 1993 for FBI summaries on people such as James Baker and Marlin Fitzwater, people who clearly were well-known and no longer worked for the White House?

Mr. SHAPIRO. Mr. Chairman, as I have said in the report and said today, this was an egregious mishandling of the situation, and we permitted a massive invasion of privacy. I would say that one of the research analysts did note the name of James Baker, but her thought about that is perhaps this present White House is thinking of appointing him to some position or some commission and needs access and—I don't know. The problem is, the bigger problem is—and this is a problem for which the FBI is responsible—is that we had such a tradition of deference that no one would ask those questions.

The CHAIRMAN. Now, Mr. Shapiro, Director Freeh's press release says that the FBI's inquiry discovered "egregious violations of privacy." And the FBI's report itself says the following, on page 23:

The analyst with responsibility for the White House recalled quite clearly, however, that in late 1993 a large number of such requests seeking copies of previous reports were received from the Office of Personnel Security. That analyst remembers being surprised by the volume of such requests, all of which she notes covered names in the first several letters of the alphabet and were sought for the purpose of "Access."

Can you assure the public today that these problems will not recur?

Mr. SHAPIRO. Well, I can assure the public today, Mr. Chairman, that we are taking every step we can to see that they do not recur. I believe that the changes recommended by Director Freeh and approved by Deputy Attorney General Gorelick, which dovetail with and complement changes made by the White House counsel's office, with which they obviously need to fit together since we are two ends of one process, will go a long way primarily by insisting on the consent of those whose files are requested or a written explanation from the counsel to the President about why such consent cannot be obtained or should not be sought.

In addition, we are building in some review procedures, both by my office, the Office of the General Counsel, which will receive a copy of each request, but also by the FBI Inspection Division, which will conduct periodic audits.

So I think we have made great steps there. Among the recommendations, I should note, are that there be further conversations both between the FBI and the White House and between the FBI and the Secret Service to ensure that we do everything we can, because I am not confident that—although I am confident we have made important strides towards solving this, we have only been focusing on this for 2 weeks, and we can't think that the issue is entirely behind us.

The CHAIRMAN. My time is just about up, but let me just show you two lists. One has more than 300 names on it, and the other one has 138 names on it. You are aware of these lists.

Mr. SHAPIRO. I have been—

The CHAIRMAN. Each list was obtained from the White House, and your report said that the White House has admitted that it improperly obtained FBI files on all of these persons.

Now, please look at these two lists and answer this question for me: Did the FBI create either of those lists?

Mr. SHAPIRO. No, sir.

The CHAIRMAN. Did the Secret Service create either of those lists?

Mr. MILLER. No, sir.

The CHAIRMAN. Senator Biden.

Senator BIDEN. Gentlemen, Mr. Shapiro, one of the things that Senator Thompson had asked a question earlier about, there were one, two, three, four, five, six, seven, eight White House travel people fired, and three of them, their files were requested, their previous file or their summaries were requested in this list of 481 people. One of them was this Mr. Dreylinger. Mr. Dreylinger's file was not in the box that was returned, and it was checked out to Craig Livingstone.

Now, what I am trying to figure out—because I found that strange, why that would not be in the files being returned. Is it possible or do you know that since there was a subpoena, a committee subpoena from Mr. Clinger's committee seeking Mr. Dreylinger's file, that the checked-out might have been—it would have been Mr. Livingstone's responsibility to go get that file and take it to the counsel's office and send it over? Do you have knowledge as to why that file was out? Could that be the reason? Was that the reason, do you know?

Mr. SHAPIRO. I don't have any knowledge. I can't say if that was the reason. The timing would be consistent with that. But let me note one thing, if I can, about Mr. Dreylinger's file. This is noted in Footnote 31 in my report on page 26.

The White House returned to us a folder with Mr. Dreylinger's name, and it is referenced on this list that they released. However, the request for Mr. Dreylinger's previous reports was never, to the best we can determine, submitted to the FBI, and no information was ever returned to this White House during this time period relating to Mr. Dreylinger.

They had prepared a request, and that was in the folder. But it had never come to us.

Senator BIDEN. Had never come to you. OK. Well, we have got to find that out, and you are not the source to find that out.

Mr. Miller, thank you for your testimony. I know you guys are professionals and you don't like speculating, so you may not want to. Where would a list—could you speculate or is there an educated guess you could give us how there could be a list that obviously was more than 431 names, because it was in alphabetical order—it is 431 names to get up to G-o—that were almost in exact alphabetical order? Is there any list not prepared by you or anybody in the world that you know of that had—where this could have come from? I mean, it seems—do you know what I am trying to get at? I am confused as hell here.

Mr. MILLER. You are right, Senator. We don't like to speculate. But I have asked our computer people where lists like this would have come from, and we have run the whole gamut, from just speculating—we have no idea. We really have no idea where this list came from.

Senator BIDEN. How many requests—you indicated, Mr. Miller, that there are these E-pass—you have in your computer somewhere a list of everybody who has—did you call it an E-pass? Tell me what that is.

Mr. MILLER. That is our electronic pass and security system.

Senator BIDEN. Right.

Mr. MILLER. It is really the system which generates our hard pass.

Senator BIDEN. Right. How many names are in that system?

Mr. MILLER. Approximately 24,000.

Senator BIDEN. 24,000.

Mr. MILLER. Right.

Senator BIDEN. So obviously—I shouldn't say obviously. Let me ask the question. Of the 24,000 names, are they all current pass-holders?

Mr. MILLER. No. Many of them are inactive.

Senator BIDEN. And how long could they have been inactive? Are there people that are inactive for 2 years?

Mr. MILLER. Our files keep the name of inactive people for 8 years.

Senator BIDEN. So 8 years. So these 24,000 people, you have a file somewhere that if you pressed a button and asked the computer to spit out everybody who is on your E-pass list, it would add up to 24,000 names, roughly, and some of them would have been inactive for as long as 8 years.

Mr. MILLER. That is possible, yes.

Senator BIDEN. I am curious. Why would you keep the list where people were inactive for up to 8 years?

Mr. MILLER. This was a decision that was made because the administration could—an administration could last for 8 years. Some of the people who come to the White House to work leave, come back, leave and come back. It is really an administrative—

Senator BIDEN. Decision.

Mr. MILLER. It is an administrative aid for us, also.

Senator BIDEN. Again, help me out here, unrelated to who done what to whom, I want to know how it usually works. When an administration leaves office, there is a room somewhere in the White House that has FBI summary files in it. Right?

Mr. MILLER. Yes.

Senator BIDEN. Is it standard practice that the departing administration—when Reagan left office—or before that, when Carter left office, Reagan came in, would the Carter administration have sent all the files they have in that room to the archives?

Mr. MILLER. That is my understanding. I don't know, but that is my understanding that is what happens.

Senator BIDEN. But do you know that that happened—and there is nothing nefarious about it. I mean, do you know that that did happen in the Bush administration? When the Bush administration left office, they had somewhere between one and several thousand files in an office. Right? And that when they left office, before the new guy came in to take control of that room, they emptied that room of all those files and sent all those files to a thing called the archives. Is that right?

Mr. MILLER. I don't know that that happened, but that is what should have happened.

Senator BIDEN. Can you tell me who I would go to to find out if it happened? Who could verify whether or not that happened? Your guy behind you is looking at you. I know how you feel. I have staff behind me, too.

Mr. MILLER. We don't know. [Laughter.]

Senator BIDEN. Can anybody tell me who would know? Who would I go to to ask the question whether or not that room had been cleaned out?

Mr. SHAPIRO. I would assume, Senator Biden, that you would go to the professional staff of the Office of Personnel Security who were there under President Bush who handled those files at the end of the administration.

I can tell you that it was the impression, the understanding of the FBI employees handling these name checks that that had occurred, but they didn't have any direct knowledge.

Senator BIDEN. I have got you.

The CHAIRMAN. You would go to the archives, wouldn't you?

Mr. SHAPIRO. Or to the archives.

Senator BIDEN. OK. So it is our understanding, at least my staff tells me it is our understanding that the Bush administration did routinely what should have been done. It wasn't a bad thing to do. They routinely took the files of all the people that worked for them, whether they were going—well, apparently in Boyden Gray's testimony yesterday, he said when a new administration arrives—I am quoting—"arrives at the White House on Inauguration Day, virtually all of the prior administration's records have been removed for storage in the Presidential archives." It doesn't say he did it. We have got to get precise here.

So the point, we are led to believe the room was empty. There were no files on anybody. Now you have got a new guy in town. He is the new guy. Now—can I just finish this line? I am not going to read anymore. Because I want to make sure I understand the process, not who done what but the process.

When the new guy comes in, the new guy is required, his security people are required—question: Are they required to make sure that anybody who is in that White House at that time, from the moment they take over, has security clearance, that they have a pass? To get a pass, you have got to have a security clearance. Right? Or wrong?

Mr. MILLER. Yes.

Senator BIDEN. I am getting confused by the guy behind you. He keeps shaking his head no, and you are saying yes.

Mr. MILLER. When you say security clearance, I mean, they—

Senator BIDEN. No, a guy who gets a pass, I get a pass to walk in and out of the White House. I work in the White House mess. Every day I show up. My hours are from 10 a.m. until 2 p.m. I get a pass or I don't get to walk in the door.

To get that pass, what do I have to do to get that pass?

Mr. MILLER. To get that pass, you have got to have a background investigation. We look at that also, and we make sure that everything is—

Senator BIDEN. Right, OK.

Mr. MILLER. That is the security clearance that I was saying yes to.

Senator BIDEN. And I know I am over my time, but let me just ask—I will come back on this, because I want to understand. It must be a confusing day. I am not being facetious. It must be a confusing day. The cook who cooked for Bush, who stays on to cook for Clinton, the new team that comes in, the security team walks into an office where the vaults are empty. The cook's name is not in there. Yet the cook has to show up on the first day to cook. How do you know whether or not that cook is allowed to walk in the White House, serve the President and maybe not shoot him? Instead of giving him pheasant under glass, he may have a gun under glass. How do you know that?

Mr. MILLER. Well, I agree with you that it is very confusing.

Senator BIDEN. That is what I am trying to figure out here.

Mr. MILLER. The files will not go over to the archives until the pass-holder has been declared inactive. I mean, you have to turn in your pass for that file to be deactivated.

Senator BIDEN. That gets me to—and I will stop with this question. That gets me to my point of confusion, and maybe the chairman or staff knows the answer to this. I don't. I was under the impression that the day that the Bush office left office, they took every pass, every file in the White House and cleared it out. People may still have had passes, but there was no way for the new team to know whether that pass being worn—you know, Johnny Gonzalez, who is the cook, walks in one day. The President says, hey, what do you know about the guy serving me my meal? They call the security office. The security office says, I don't know, let's go in the room and look and find his file. You walk into the room, and there is no file on Johnny.

It seems like a screwed-up system you all have. How do we know Johnny, who serves the President the next day, is cleared if there is no file in that room?

Mr. MILLER. We have already gone through the background check with these people, so if they have a hard pass such as this—and many of them do, and many of them go through the transition, as you would go and stay—they are career people. We already know these people. So until a person turns in their pass and is deactivated out of our system, he is still active.

Senator BIDEN. But you, the Secret Service, are the only one that would know that. Right? The security office couldn't know that because they don't have any file. They have got to take your word for it. Right?

Mr. MILLER. They may or may not have a database. I don't know that. But I will tell you, what happens is that in our E-pass system we have a file that is routinely provided to the White House Office of Personnel—when I say routinely, I would say at least—I mean, at least once a month, during this period more than that. In that period—and this is why we keep this file—we compare and they use it to compare the people who are still in the White House who have these passes to make sure, because they are the ones that give us the information to deactivate a pass.

Senator BIDEN. The point I am making may have no relevance and maybe I am just confused by it.

The CHAIRMAN. Senator Biden, your time is up—

Senator BIDEN. You can have a pass, but the new administration has to assume that you personally have cleared the person because they have no way to know, other than you, right? Because there is no file in the office they can go to and look at Johnny's file. Right?

Mr. MILLER. Yes, I think—I don't know if there is a file in there or not.

Senator BIDEN. Good. That is all I am trying to figure out. I am just trying to figure out how things—

The CHAIRMAN. Why would they need it? Would they need it?

Senator GRASSLEY. That is right.

The CHAIRMAN. Why would they need it?

Mr. MILLER. They wouldn't. The person who has got the pass has already been through this.

Senator BIDEN. Why do they go and—

The CHAIRMAN. You are way over time here. Let me just say this. We have got a vote on. I would recommend that everybody who can go vote now go vote. I am going to be pressured because I have to go to a debate on the floor after the second vote, so we are going to turn to Senator Grassley. Hopefully he can complete before he has to go vote, and then we will move to whoever is next.

Senator GRASSLEY. Mr. Shapiro, I want to—this is more like a request. I hope you can do it. You have a document in your possession. It is among the documents provided you by the White House related to Update Project. It is a list dated March 1993 entitled "E-Pass Possible Admin Hold-over Pass-holders by Name." Would you look into the possibility of providing that document for the committee?

Mr. SHAPIRO. Yes, I certainly will, Senator, and the only basis on which I can imagine not providing it is if there is an objection from the independent counsel.

Senator GRASSLEY. OK. Mr. Miller, I want to clarify an issue that I know many people are asking about, and I really have three questions I am going to ask all at once and then ask you to respond. Is it possible that the Secret Service could print out a list with erroneous information? And could such a list have been used by Mr. Marceca? I believe the answer is yes, technically, but as I understand the system, the Secret Service would generate the list, but there had to be a request first from someone outside the Secret Service, and the printout would have occurred at the wave center and not the access control center. Is that correct? And if I am not correct, could you please help us understand what the possibilities are there?

Mr. MILLER. That is correct. The E-pass system would not print an outdated list. Certainly as the system goes down to the workers, appointments, and visitors entrance system, there is a partial download of some of that information. And this area has nothing to do with White House access. It is used to assist the officers at the gate and the access control officers in their daily routine of verifying appointments.

That list has several different fields, and certainly that could be manipulated to a certain degree. The E-pass system, the one where we have the inactive and the active files, the audits that we have

done in the last week have shown that that is not inaccurate and it doesn't give any flawed data.

Senator GRASSLEY. Was Mr. Livingstone ever briefed by the Secret Service on the E-pass system so that he would understand the significance of that list versus any other list and so he would know who had access and who didn't? And would he have been aware of the meaning of "I" for inactive and "A" for active under the status column?

Mr. MILLER. Mr. Livingstone was given a thorough briefing on the E-pass system, on the inactive and the active markings on this list, and further, I have been told that he was briefed to the fact that this was the data which we should rely on.

Senator GRASSLEY. So he was adequately briefed so that he should have known which was the proper list to use.

Mr. MILLER. That is correct.

Senator GRASSLEY. OK. Yesterday Nancy Gemmell testified before Chairman Clinger's committee that the Secret Service provided her only one list. Can you confirm this and state which list that was?

Mr. MILLER. I don't know which list that was. Initially—I could only speak to this administration. Initially, we gave the list—as I said, the active and inactive lists from our E-pass system. We also could from there put down the active pass-holders in another list from the E-pass system. I don't know which list she was talking about.

Senator GRASSLEY. OK. But there was one list?

Mr. MILLER. Right.

Senator GRASSLEY. OK. Now, Mr. Marceca said in his affidavit that he was given various lists, plural, for the FBI request, and he understood these computerized lists to come from the Secret Service. Is it possible in your mind to reconcile the testimony of Nancy Gemmell with that of Mr. Marceca, and, third, the Secret Service's process as you know it?

Mr. MILLER. Our E-pass system is one list. That is the list in which all our data lie. If Mr. Marceca went to somebody else down in another computer area and generated a list down there that has nothing to do with our E-pass system, that might be a possibility. That would have to be—and I say this, I am almost sure that would have to be a customized list.

Senator GRASSLEY. I am afraid I am running out of time because of having to go vote. I am not quite done, and I might submit some questions in writing. But I think I would draw this conclusion not for you, gentlemen, but for the committee as a whole. My feeling kind of is that the bottom line for the White House is that their claims of this being a fiasco that came about because of a computer glitch and an outdated Secret Service list is not a very legitimate rationale. But let's suppose that you want to assess some burden. It seems to me that then the onus is on the White House to produce that list, and I would urge them to produce it. Otherwise, as far as I am concerned, their assertion has no credibility.

I yield the floor.

Senator BROWN. Thank you.

Mr. Shapiro, I wonder if you can help me with your process. As you have a request for a file and deliver that file out, do you deliver a copy of that file, or do you deliver the original file?

Mr. SHAPIRO. First, Senator, let me clarify. Are you asking for the process as it existed before we changed it last week?

Senator BROWN. Yes.

Mr. SHAPIRO. Yes. The request for a previous report, which were the sort of requests at issue here, would come in and go to an analyst eventually, after a few steps, to an analyst in our executive agency subunit. That analyst would call up the background file that contains all of the previous background reports that may have been done on a particular individual, 5-year reinvestigations, things like that.

That analyst would then take from that file those portions which were previously disseminated to the White House. That will typically be the summary memorandum. At the end of each background investigation, a summary memorandum is prepared, and that is forwarded to the White House.

Sometimes, in addition to that summary memorandum, a particularly salient FBI 302, which is a report of investigation, will be attached to that, and if it was attached the last time it was sent when a request for a copy of a previous report comes in, it will be sent back again.

The analyst just replicates, reproduces whatever has been previously sent, previously disseminated, and makes copies of it and sends that back over. So not the original, not the whole file, but the portions previously disseminated.

Senator BROWN. So the originals of the file, whether it is delivery of a file to Congress or delivery of a file to the White House, the originals stay with the FBI?

Mr. SHAPIRO. Certainly when it is a delivery to the White House, and I believe generally when it is a delivery to the Congress. Sometimes the original file is brought for the inspection of a committee, but it is retained in the custody of the FBI.

Senator BROWN. And when you deliver it to the White House, what kind of recordkeeping do you keep to indicate who it has gone to and what purpose it is to be used for?

Mr. SHAPIRO. Well, again, as I found in my report and reiterated earlier today, we kept inadequate records of who requested it and who it was returned to. All we knew at the time was that it was a request on the authorized form, like the one that is up there on display, the one with less language on it, that it came from the Office of Personnel Security where it was picked up by a courier and brought to the FBI, and then that it is returned by courier to the Office of Personnel Security. But the name of who requested it, the name of who, if anyone, approved it, was not contained on the form. Those are two of the changes that Director Freeh made and Deputy Attorney General Gorelick approved last week.

Senator BROWN. The form, as I understand it, that was used in most of these cases was a memorandum form similar to what is illustrated, a memo form from counsel to the President, Nussbaum. Who all is authorized at the White House, or who was through that period authorized to request these files and have that request honored?

Mr. SHAPIRO. There is an access list that is created, and at the White House, within the White House Office of Personnel Security—and this is, I am sorry to say, a March 1996 list, so it may not have been precisely the same people at the time, though I could get that to you. As of March 1996, the three people in that office were Craig Livingstone, the Director of the office; Edward Francis Hughes, the Executive Assistant; and an individual by the name of Jonathan Denbo. Those were the authorized people to make requests. Those were the people—

Senator BROWN. Not Nussbaum?

Mr. SHAPIRO. Well, in addition, at the White House counsel's office, all of this done—the Office of Personnel Security is a component of the White House counsel's office. The counsel to the President is always authorized to do this because this is all done in his name.

Senator BROWN. If you would supply for the record the complete list of those authorized to gain the files?

Mr. SHAPIRO. I certainly will. And let me just clarify, at the risk of further confusing. There are other entities commonly thought of as the White House, though distinguished legally. The Executive Office of the President makes their own requests through separate channels. The National Security Council makes their own requests through separate channels. And in the Clinton administration, if it was a request for material relating to a Presidential appointment, to a political appointment, the request did not come—or at least did not typically come from Craig Livingstone's office. It came instead from a paralegal in the counsel to the President's office. But I will provide the committee with a complete list of all of those people.

[The list was not available at presstime.]

Senator BROWN. Thank you.

When I was in the Navy, if I ever received classified material, I was required to sign forms that indicated I had received it, usually, and I was required to sign the procedure that I was to follow indicating I was aware of it and subject to criminal prosecution if I did not follow it with regard to the proper handling of that material.

Are those two procedures followed with the White House?

Mr. SHAPIRO. They were not. I believe the changes we have made will ensure largely that they are. Let me clarify one thing again.

With very rare exceptions, information contained in background investigations and in their reports are not classified in the sense of having a national security classification. They are not classified at the secret or top secret level or even at the confidential level. That is not to say they are obviously not very sensitive and that we shouldn't handle them just as we do classified national security information.

The new report, the new form, will require a certification with recognition of the criminal penalty for making a false statement that the above information, whatever is sought, is sought to official purposes and a statement—well, let me just read it. It says, "I certify subject to 18 U.S.C. Section 1001"—which is the criminal penalty for a false statement—"that the above is sought for official purposes only, and I understand that any unauthorized disclosure

may be a violation of the Privacy Act." And so that will now be on every request that comes with the signature below that, and, furthermore, a signature of an attorney in the White House counsel's office who has reviewed and approved it.

Senator BROWN. It is an appropriate distinction you made with regard to the military. I appreciate it.

This memo or many of these memos, signed off by Nussbaum, apparently were not from him; that is, came from people who reported to him or were in the chain of command lower down that reported to people who reported to him. Is it appropriate for someone to send a memo in Nussbaum's name without him being aware of it?

Mr. SHAPIRO. Well, that is perhaps a question better put to the counsel to the President. It is under these circumstances, we think, inappropriate to have requests that do not indicate in any way who is invoking the name of the counsel to the President. And I personally wouldn't be troubled if it continues to come in the name of the White House counsel as long as it is very clearly stated who is acting on that person's behalf.

Senator BROWN. Sure, like the fax, you have an initial by the person who—

Mr. SHAPIRO. Right. And in here we will require full signature.

Senator BROWN. Yes. Now, my experience with these files in Congress has been very limited. On the Foreign Relations Committee in prior Congresses, we were never allowed to see them, even though we requested them. On the Judiciary Committee, we were allowed to see them only in the presence of an FBI agent. Is the process of limiting access to these to Members of Congress only in the presence of an FBI agent something that is applied to all Members of Congress, or are there some Members of Congress who are allowed to view these files without a member of the FBI being present?

Mr. SHAPIRO. I believe—I am looking toward the congressional affairs people.

The answer that I am told is that a separate MOU is negotiated, memorandum of understanding, with each committee between the committee and the FBI as to exactly what are the conditions. There are not within those distinctions made, as far as I am aware, between individual Senators.

Senator BROWN. Does that mean that some Members of Congress have been allowed to observe these files without a member of the FBI being present?

Mr. SHAPIRO. I am told the answer to that is no, sir.

Senator BROWN. Well, one obvious question presents itself. If you feel it is important, as obviously the FBI does, that a member of the FBI be physically present at all times where these files are shown to Members of Congress, why is it they would simply be delivered without, at times, even noting who they went to, to the White House?

Mr. SHAPIRO. Well, they shouldn't have done that. I completely concur with that, Senator Brown, and we are taking steps to see that they are handled better. I would say—

Senator BROWN. Would that include requiring the presence of a member of the FBI?

Mr. SHAPIRO. No. No, it would not, sir. After all, these files are—the purpose for which these files are created is so that the Government—in this case, it is usually the executive branch—can make decisions as to suitability and trustworthiness for employment and for access to classified information or access to secure areas, such as the White House. It seems to me from my perspective that there is a legitimate need for a properly regulated White House Office of Security to have the reports on all the people who they are giving daily access to obviously one of the most sensitive areas in our Government, which is to say access to the President, access to areas where all sorts of matters are discussed.

Now, whether or not there is an equivalent need with some congressional committees or Congressmen or Senators, I don't know.

Senator BROWN. It is possible?

Mr. SHAPIRO. It is possible.

Senator BROWN. Well, speaking for myself, I think it is a protection for Members of Congress that you have an FBI member present. It answers, before it is asked, any question about their unauthorized use of information, and my experience is that all Members of Congress are not perfect in this respect. At the same time—

Mr. SHAPIRO. I wouldn't have an opinion on that, Senator.
[Laughter.]

Senator BROWN. That you would like to share.

At the same time, there is quite a contrast. I find it strange.

My understanding is that the Clinton administration is running roughly double the number of requests for FBI files than the Bush administration did, and I think you have supplied those figures in detail.

Mr. SHAPIRO. Yes, sir.

Senator BROWN. And that is perhaps an over-exaggeration. I know there are a number of categories, but I think that is a fair representation.

You might comment on whether that is a reasonable representation, and also, I would be interested in knowing if you are aware of a reason why there has been that change.

Mr. SHAPIRO. Yes, sir. Let me do the best I can to explain that and start by saying we only have information in usable form that goes back to 1990. So I can make comparisons between the Clinton administration and the last 3 years of the Bush administration, and we only have incidental access to information before that.

It is correct that between 1990 and the end of the Bush administration requests for information from FBI files, name checks usually, not usually copies of previous report, averaged between 250 and 290 per month. In 1993, that number dramatically increased to 850 per month, and then has since come down, though it still remains somewhere in the 350 to 400 per month average.

One possible explanation for that—and I am unable to say how much of the disparity this accounts for—is that there obviously had been Republican administrations for 12 years, that there were a new batch of people coming in who may not have recently served in White House staff positions. It is the experience of the people in our executive agency support unit that change of administrations, and particularly change of administrations that include a

change of party, lead to significant increases in the number of requests.

To what extent that accounts for the disparity, I am unable to say.

Senator BROWN. No, but that is helpful in understanding other reasons you are not aware of, at least at this point.

Is that something that the FBI looks into, questions, or basically are there to serve the request?

Mr. SHAPIRO. Well, it is something that we now are looking into and questioning. It is something, I regret to say, that before, we entirely deferred to and no questions were raised. If we got the request, we answered it. That is one of the things, perhaps the central attitude, that Director Freeh has announced he wants changed, and we are changing.

Senator BROWN. I wanted to address some questions to Mr. Miller also. I know you have been over this area, but I wanted to clarify, at least for my purposes, if you are willing.

As I understand it, your agency is responsible for preparing lists of people that would be used for the purpose of requesting clearances and authorizations for access.

Mr. MILLER. Access control, yes. The people who would enter the White House, yes.

Senator BROWN. And you have indicated, if I understand correctly, that you don't produce a list in the form of which we are discussing here. Do you have any explanation how a list like that might be attributed to you?

Mr. MILLER. You are speaking to this list?

Senator BROWN. Yes.

Mr. MILLER. I have no idea. No idea how this list was compiled.

Senator BROWN. And is that because of the nature of the names on the list or the order in which the list is produced? What—

Mr. MILLER. I think it is the format. I don't know this format.

Senator BROWN. So it is not a format that you use.

Mr. MILLER. No.

Senator BROWN. What about the order of names, an alphabetic listing?

Mr. MILLER. Well, they are alphabetical, and I don't know whether they would get that from—I don't know where they would get that list. I just—

Mr. SHAPIRO. Senator, I am sorry to interrupt.

Senator BROWN. Yes, Mr. Shapiro.

Mr. SHAPIRO. I might be able to shed some light onto this list, although not definitively, but my understanding of this list is that this was the inventory of the two boxes of folders that had been already segregated from the other Office of Personnel Security records as having been recognized by someone at some time in the White House that they were relating to people who no longer needed access. So when those boxes were turned back over to the FBI on the evening of June 6, this was the inventory they pulled out to compare it to. That is as to the first list. The second list I can't speak to.

Senator BROWN. That is very helpful. Let me clarify a point there, if I could.

When someone has completed—when the White House is finished with the file that may be made available, are they obligated to return that file or the copy of that file to the FBI? And does that normally happen?

Mr. SHAPIRO. Well, that is one of the matters that one of the recommendations is that we need to sit down and discuss. The practice has been, as I understand it, that when it is a record that was properly obtained and it relates to someone who served in the administration, it is boxed up with the rest of the records and sent to the archives as part of the Presidential papers of that administration and does not come back to the FBI.

In this case, having been identified as wrongly obtained, in my view they should have been returned to the FBI.

Senator BROWN. Mr. Miller, as I understand it, Mr. Marceca began requesting secret FBI files on December 6, 1993. Do you know when prior to that date was the last time the Secret Service had updated the pass-holders list, that is, people wanting access to the White House?

Mr. MILLER. I don't know specifically, but our E pass data base is, as the computer people say, a living document that changes every day because people come and go and people go on the list and off the list. That was routinely passed to the White House at least once a month. This period, I would say it was at least that much.

Senator BROWN. Thank you. That is very helpful.

The Senator from California I believe is next.

Senator FEINSTEIN. Thank you very much, Senator. I am having beeper problems here.

I hope I am not redundant, but we have votes going on, and so I missed some of testimony. I am perplexed by a number of things.

Let me ask this question to the both of you, if I may. Where did the names come from that were on the A to G list?

Mr. SHAPIRO. Senator Feinstein, I don't have the answer to that question. We don't—the list that we have produced to the committee that is A to G is off of our computers as to what we have provided. But as to what list Mr. Marceca, if it was Mr. Marceca, was working off of and where it came from, we don't know. We don't have any information, and at the request of the independent counsel, we didn't conduct any interviews in order to seek to determine that.

Senator FEINSTEIN. Who requested that list?

Mr. SHAPIRO. I am sorry?

Senator FEINSTEIN. Who requested that list?

Mr. SHAPIRO. I haven't the slightest idea.

Senator FEINSTEIN. Well, I read in this morning's Washington Post, giving her account yesterday for the first time, Gemmell, who worked in the White House security office for 12 years, appeared to contradict Marceca under questioning by Representative Schiff. He asked her, What list Mr. Marceca was working from? Where did the list come from of names that he was using to ask the FBI for records? And then, "Sir," Gemmell replied, "the only list to my knowledge was the list that was received from the Secret Service, which was left behind at the time of my departure."

So, Mr. Miller, let me ask you the question. Did the list come from the Secret Service?

Mr. MILLER. The list that Mr. Marceca—

Senator FEINSTEIN. The A to G list that is in question.

Mr. MILLER. I have no idea where that list came from. The list that Mrs. Gemmell was talking about is our E-pass list that is in our data base with all active and inactive pass-holders for the last 8 years. We routinely gave that to that office.

Senator FEINSTEIN. Let me ask you this question: Is it possible in your data base that active White House passes were mixed with inactive ones?

Mr. MILLER. Yes. For a purpose.

Senator FEINSTEIN. So if somebody, for example—let me ask this question: What happened to files at the end of the Bush administration?

Mr. MILLER. We will go back over this, but actually—

Senator FEINSTEIN. Just quickly, just tell me.

Mr. MILLER. Yes, ma'am. I don't know for sure. We know what should have happened. We know they should have gone to the archives. We—

Senator FEINSTEIN. Did they go to the archives?

Mr. MILLER. That I don't know.

Mr. SHAPIRO. Neither of us knows the answer. We are both under the—have that understanding, and the people at the FBI who worked with the Office of Personnel Security had that understanding that they were forwarded with the Presidential papers of George Bush to the archives. But, again, because we conducted no investigation at the White House, we were unable to verify or corroborate that.

Senator FEINSTEIN. So you do not know where the Bush files were. Do you know whether or not the Bush files remained at the White House?

Mr. SHAPIRO. Again, I do not know. It is my understanding and it was the understanding of the people of the FBI who handled these requests that they did not. But, again, we did not verify or corroborate that.

Senator FEINSTEIN. All right. How many of those names on the A to G list were Bush hold-overs?

Mr. SHAPIRO. Well, again, we don't have whatever list Mr. Marceca or whoever else was working off of.

Senator FEINSTEIN. Well, you did this investigation. Didn't you look at the list?

Mr. SHAPIRO. Senator Feinstein, we were requested by the independent counsel to refrain from conducting any interviews at the White House so as not to interfere with their investigation. So, first of all, we did not do that.

Second of all, as far as I know, the White House has to this date not discovered the list. This list has never been turned over to either—as far as I know—this committee, to the FBI, to the Secret Service, or to the independent counsel.

Now, I created a list from FBI data bases of information we provided and of requests that came in. But the list—

Senator BIDEN. Excuse me, Senator. Is that the 481-person list?

Mr. SHAPIRO. Yes, Senator Biden. Actually, one name is in there twice. It should be 480.

Senator FEINSTEIN. So if I understand your testimony, you don't know where that list came from, you don't know what happened to Bush files, you don't know whether there were hold-overs in the White House from the Bush administration, and if so, how many. Is that correct? Would you answer yes or no, if you could?

Mr. SHAPIRO. I will answer. It is largely correct. I do know—or at least I should say it has been represented to me by the White House counsel's office that some of the files they held were for people who were held over. And so a portion of them out of the total of 480, I believe a total of 54, they identified as properly obtained held-over employees.

But that is from my list, Senator. That is not from a list that the Office of Personnel Security was working at, and we didn't conduct that investigation because we were instructed not to conduct that investigation.

Senator FEINSTEIN. All right. Let me ask you a question. On your list, were there other members of the travel office on that list whose files were requested, specifically Gary Wright, John Dreylinger, Barnaby Brasso, John McSweeney, Ralph Maughn, or Robert Van Imeren? Were any of those names on that list?

Mr. SHAPIRO. Yes, again, our list only goes up to Go, so some of those names are, by definition, not on that list. The names of Barnaby Brasso was on the list, and information was provided in response to a White House request for his file. The file—and I explained this earlier, too—as relating to Mr. Dreylinger was returned to the FBI along with these others. But, in fact, all it contained in it was an unsent request for his previous reports, which the FBI had never received and hadn't processed.

Senator FEINSTEIN. I am sorry. What kind of request?

Mr. SHAPIRO. A request that had not, in fact, been sent. One of those forms that was filled out that said John Dreylinger, but had not been sent to the FBI. So to fully answer your question, reports as to only two of the seven fired White House travel office employees, Billy Dale and Barnaby Brasso, were provided to the White House Office of Personnel Security in response to requests that were received during this series from December 3, 1993 through February 3, 1994.

Senator FEINSTEIN. Well, wouldn't the White House, if it were going to use these files for any reason, have asked for all of them?

Mr. SHAPIRO. I can't speak to what the White House would do.

Senator FEINSTEIN. Mr. Miller, was there an error in your computer tracking system?

Mr. MILLER. Not that I am aware of.

Senator FEINSTEIN. What is the case at the present time with respect to these requests? Who initiates these requests?

Mr. MILLER. The requests for—

Senator FEINSTEIN. For a file, for an FBI file?

Mr. MILLER. The White House counsel's office and the Office of Personnel Security.

Senator FEINSTEIN. And that was the case at that time as well?

Mr. MILLER. Yes.

Senator FEINSTEIN. Thank you.

Senator BIDEN. Mr. Chairman, may I ask a question about the list, to follow on?

Senator THOMPSON [presiding]. Certainly.

Senator BIDEN. I want to make sure I have this straight, Mr. Shapiro. I think I do.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. Mr. Marceca—I am mispronouncing his name again—a designee from the Defense Department—

Senator THOMPSON. Army.

Senator BIDEN. Army—was in the White House security office for several months. He requested of the FBI previous—what is the category called?

Mr. SHAPIRO. Copies of previous reports.

Senator BIDEN. Copies of previous reports off of a list that I don't where he says he got, but off of a list, apparently off a list. We have never seen that list. This committee hasn't seen that list. I haven't seen that list.

Mr. SHAPIRO. Nor have I, Senator.

Senator BIDEN. But your office, when asked about requests that had been made for previously done investigations, one of your people observed that there was beginning on December 6, 1993, a list of 480 people, more or less, if not precisely, basically in alphabetical order going up to the last name numbered 486, a name that began with G-o, the first two letters were G-o.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. So what you did is your office compiled this list I have been holding, and you in response to a letter from the special counsel to the President said: "In the course of attempting to reconcile the list of files you returned to the FBI on June 6, 1996, with our computerized records of White House requests, we identified approximately 143 additional requests for copies of previous background reports made during the same period of time and providing the same justification—access. In the enclosed index—and that is the index with the names on it—numbered from 1 to 486, the entries in bold type are those additional requests which were not contained in your files returned last week. There is no way to determine from FBI records whether these requests were made in the same fashion, by the same person, or from the same list as those requests contained in the two boxes you returned to us. Moreover, there is no way that we can quickly determine whether the White House, in fact, had a need for reports relating to these individuals. Consequently, I am seeking your assistance in explaining these additional requests. Please identify to the extent possible whether these individuals were on-board White House employees or otherwise in need of access to the White House complex or whether these files were sought in error. I appreciate any assistance you can offer in this regard. As you know, I am under a deadline, Friday, June 14, 1996, for making my preliminary report to Director of the Department of Justice. Thank you for your attention to this matter.

Now, in order for you to determine 146 names were not returned, files were not returned to you, you had to have done something in your computer to generate these 486 names.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. What did you do to generate those names?

Mr. SHAPIRO. Let me explain that, and let me just make one slight—I hesitate to use the word “correction,” but amendment to your earlier statement. I attribute these requests to Anthony Marceca because he has publicly admitted making them. Since we didn’t do any investigation at the White House, and since the forms, unfortunately, as they previously existed, didn’t require the name or any indication of who was sending them, that I can’t independently corroborate.

Senator BIDEN. I got you.

Mr. SHAPIRO. But let me go to your question.

What I did is I was actually myself looking through these two volumes, September 1993 to December 1994, of—it is called the computer purge list; it has been purged from the computer because it has gotten too big and the computer can’t work anymore—a list in alphabetical order of all of the requests of the White House. And glancing through this, I could discern a pattern that during that same time period from the 333 they had already returned to us, which spanned from December 6 to February 3, that there were other names that fit within—as you went to the names on those lists, there were others that would be skipped over—

Senator BIDEN. That weren’t returned to you.

Mr. SHAPIRO. That were not returned to us that also asked for the same thing, previous reports, asked for it at the same time period, and provided the same explanation, which is to say access.

I then had a couple paralegals who work for me do the thankless task of actually going through and recording those names onto this list. They had already prepared the list without the bold names to reconcile our computer list with those documents. They added the bold names, and then I requested of Ms. Sherburne—

Senator BIDEN. I got you. Now, does that lead one to believe that somebody who was sending those forms over to the White House beginning December 6—we don’t know who for certain—somebody was requesting in alphabetical order a series of names?

Mr. SHAPIRO. Absolutely, Senator. They bear all the characteristics of an alphabetized list.

Senator BIDEN. OK. Now, the important question to me is: In your report—and I can’t find the page—oh, here it is. In your report on page 25, you discuss, you mention—and I will get to the specific language in a minute. You say, you acknowledge that at some point the White House, somebody in the White House came along and, reading between the lines, said, hey, wait a minute, why are we going down a list like this? This isn’t appropriate. Stop. Because there are no more alphabetical requests—

Mr. SHAPIRO. After G-o.

Senator BIDEN [continuing]. That came after G-o. Right?

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. And that time period, as I understand it, seemed to coincide with the new person on board, with Mr. M going back to the Defense Department.

Mr. SHAPIRO. As I understand it.

Senator BIDEN. Or at least no longer working in the White House. So now we have a new person doing the job he had been charged to do, and her name was Lisa Wetzl.

Now, here is the story I am told. You tell me whether you can corroborate it or just comment on it. What I have been told by staff through interviews of people the committee has done, depositions—at least I assume that is the source of what I have been told—just interviews, not depositions—was the following: Ms. Wetzl came in and said, basically, what in the heck are you doing here? This list that you are working off of doesn't make any sense. So, A, the alphabetical requests stopped. There were no H, I, J, K, L, M, like there were A through G, A-a through G-o. That stopped.

Secondly, I am told she then looked at the 486 files or the portion of those that were—there was one that was printed twice, a couple where there was no file, et cetera. She looked at that list and concluded by some method that 333—

Mr. SHAPIRO. Three hundred and thirty-three.

Senator BIDEN [continuing]. Were inappropriately sought. So she allegedly boxed them up and sent them to the archives. Allegedly. They no longer stayed in the security office. They went to the archives.

The 146 names stayed, the files stayed in Mr. Livingstone's office, his vault, or wherever it is. Then this whole thing breaks somehow, publicly. Representative Clinger or somebody else seeks a subpoena to find out about all this stuff. The White House then comes forward, boxes up these 361 names in a box with their files, some without a file, and sends them off to you, the FBI. You, FBI, say you sent us back 361, but based on this list we have reconstructed in alphabetical order, it appears as though interspersed in those 361 A through G-o you are missing 146. Tell us, why the hell did you keep the 146? Should they be kept or shouldn't they be kept?

White House office, Livingstone's office, somebody in his operation then goes through those 146. Right?

Mr. SHAPIRO. I believe the White House counsel's office.

Senator BIDEN. The White House counsel's office now goes through the 146. I have not voted. Have you voted on Rivlin?

Senator THOMPSON. No, I haven't. Shall we adjourn?

Senator BIDEN. We have 4 minutes. Yes, if you don't mind, I mean, can I come back and finish this line, and I promise I will stop.

Senator THOMPSON. Sure.

Senator BIDEN. OK. By the way, I am not being smart when I am asking these questions. This is so confusing to me. And while I am gone, think of the question I am about to ask you, Mr. Miller. Of the 24,000 names that are in your file now, today, this moment, if you printed them all out, could you tell us which ones were active and which ones were not active?

Mr. MILLER. Yes.

Mr. SHAPIRO. Senator, before you adjourn, let me just say as to what you have said so far, everything I know is consistent with that explanation, but since we didn't conduct those interviews—

Senator BIDEN. I got it. I am not asking you—I want to come back and finish that because we only have 4 minutes, and we will be marked absent.

Senator THOMPSON. We will adjourn, hopefully for 5 minutes.
[Pause.]

Senator SIMON. If I may have the attention of the two witnesses, they are permitting me to go ahead. The signal—is that correct?

Just a second. Maybe it is not correct.

Never mind. I am sorry. We are continuing the break.

Mr. SHAPIRO. We are available when you are.

[Recess.]

Senator THOMPSON. Let's come to order, please. Could we reassemble here?

Senator Simon, I was here, and then you were here, and now I am back. If you want to go ahead first, feel free to do so.

Senator SIMON. All right. Thank you very much, Mr. Chairman.

Senator THOMPSON. I am stacking Democrat members now because when Biden comes back, I promised him he could come right back, so you better hurry. [Laughter.]

Senator SIMON. Mr. Shapiro, you mentioned that in six cases, more than the FBI summary was requested. I do not want the names of those six people, but can you characterize, you know, were these people up for appointments or what? Can you characterize those six people?

Mr. SHAPIRO. Well, let me do the best I can, Senator Simon. And if I said it like that, I somewhat misspoke.

In none of the cases that comprise this list was anything other than a box checked that said copy of previous report. So the requests all just said that. No distinction was made among them.

The distinction—and, in fact, since I created this list out of a list of those that said copy of previous report, it is almost, you know, definitional of what this list is. But in looking through what, in fact, was provided to the White House and has been returned to us, we have determined that six of those forms had attached to not just the summary reports but also the SF-86 form that is used as an application for Federal employment, and several of them, many of them, had one or more FBI 302's attached to them. So—

Senator SIMON. The 302, again, is the larger raw data file?

Mr. SHAPIRO. Well, the larger raw data file is comprised of many 302's. In no case was an entire file turned over.

Senator SIMON. OK.

Mr. SHAPIRO. Or anything even approximating an entire file. But occasionally a single report of interview or a couple interviews that would go to a particularly salient point in the background would be not just summarized but attached to that summary as well. And where they had previously been reported at the time that background was originally requested, when these requests for copies were processed, whatever was sent over before was sent over again. So that included—all of them had summaries, some of them had 302s in addition to the summaries, but, again, none of them constituting the entire file. And six has SF-86's. I cannot, to answer your question, sir, I cannot—nothing is apparent to me as to anything that distinguishes—for instance, they are not just the travel office employees or they are not just the prominent-named people. But there is only so far I can take that inquiry because the FBI doesn't maintain lists of people by political affiliation or prominence or—

Senator SIMON. But in looking at it, is there any indication that those six were asked for for political reasons, just a superficial impression?

Mr. SHAPIRO. On their face, there is no indication of that, sir.

Senator SIMON. OK. This is a question to both of you. The requests went from A-a to G-o. They stopped at G-o, presumably because of the change of personnel in the office. Is that a safe assumption? Or why was it—why did it stop at G-o? Mr. Miller?

Mr. MILLER. My understanding is that it was stopped there because somebody in the White House office said that this is not an appropriate thing to do.

Mr. SHAPIRO. Senator, all I can do is echo that. That has been the explanation publicly given. Because at the request of the independent counsel we didn't conduct any investigation at the White House, I can't independently verify that. But it is consistent with that.

Senator SIMON. OK. Then, Mr. Shapiro, in your prepared statement, you say, "The FBI personnel who processed the request for this information perform a valuable and necessary service. Nothing in my inquiry suggested any failing on the part of these employees."

In your oral statement, you added one word. You said, "Nothing in my inquiry suggested any significant failing on the part of these employees." Is there a reason for that?

Mr. SHAPIRO. I am sure there was, Senator. All of the people involved in this are susceptible to the allegation—and I think it sit fairly—that they should have been more attentive and should have done more to question. I do not in any significant way find fault with the people involved in the processing of this because they were following the same procedures that they have been following in their individual cases for 28 or 30 years, and they processed them according to the same standards, the same guidelines, and with the same deference.

It seems to me it would be inappropriate to really hold them culpable for that, but I added that word, frankly, because there is, nonetheless, some failing for everyone involved that we weren't more attentive.

Senator SIMON. And they were following whoever gave the orders. Is that correct?

Mr. SHAPIRO. They were following procedures laid down from 1965 and amended in written form up through the early 1970's and not really changed since then.

Senator SIMON. OK. Now, Ms. Carroll when she testified, she talked about a separate list for White House personnel, separate data base. Do either of you know anything about that?

Mr. MILLER. No, I don't know which one she was talking about. I am not familiar with that.

Senator SIMON. Mr. Shapiro.

Mr. SHAPIRO. No, sir. I understood her to be referring to a data base at the White House.

Senator SIMON. That is correct.

Mr. SHAPIRO. And, again, just because we withheld conducting any inquiry at the White House because of the independent counsel, I don't know.

Senator SIMON. I thank you both.

Thank you, Mr. Chairman.

Senator THOMPSON. Thank you.

Senator, let me ask a couple questions before I go back to you.
Senator BIDEN. Yes, go ahead.

Senator THOMPSON. Mr. Shapiro, with regard to requests from the White House to the FBI for information, I want to refer to your form, which is the first exhibit that is in your report. There are blanks there as to the nature of the request. The first one says copy of previous report, and the next one says name check, and there are some others. But a name check, as I understand it, is when they are asking you to do a name check on someone for more or less a rapid response as to whether or not there is any immediate problem from your data bases, anything is flagged from your data bases, or to update. For example, if they had an employee there who was, say, a holdover, they could update that employee with a name check, or if they want to give somebody access, they would run a name check to see if there was any apparent problem with that individual. Is that basically correct?

Mr. SHAPIRO. Senator Thompson, that is basically correct, but let me just speak to what appears to me to be the underlying premise of that. And if I am wrong, I apologize.

It is, in fact—a name check—a more intrusive activity than simply requesting copy of a previous report, because in response to a name check, one will supply copies of any previous reports and, in addition to that, check the data bases, a number of computer data bases as well as FBI indices. And then if those turn up files, retrieve those files, examine them, and summarize from those files any additional particularly derogatory information, since that is usually what the client is looking for. Is there anything that should give us pause in terms of suitability or trustworthiness?

Senator THOMPSON. So if it was a White House employee, they would have already gone through the full field investigation, I suppose.

Mr. SHAPIRO. At some point, sir, yes.

Senator THOMPSON. At some point. And so if you do a name check on them, that would more or less bring it up to date to see if there is anything new since the full field investigation that would show up.

Mr. SHAPIRO. Yes, sir, but only from headquarters files. The next category, expanded name check, includes reaching out to the relevant field offices of the FBI.

Senator THOMPSON. All right. So if the name check would include a copy of the previous report, what is normally the purpose of a request for a copy of previous report?

Mr. SHAPIRO. As we understand it—and, again, even some of these basic questions were never asked, and complete understandings were never gathered. But as I understand it, I should say, they were normally requested in order to have on file the summaries of background reports of on-board people or people being considered for some appointment, either a political appointment or some other appointment within the White House. If they knew there had already or in the recent past been a background, they might request that as a first step to see what is already in the files.

Senator THOMPSON. Well, what if they were seeking access for someone? Would they not normally want a name check, which would be an up-to-date check?

Mr. SHAPIRO. It is my understanding that normally for access, if it is not someone that they were just holding over and wanted to supplement their files, but if they wanted to make a decision as to access, they would want more than just a copy of previous report, either a name check or in some circumstances a full field investigation.

Senator THOMPSON. Well, even if it was a holdover, if the purpose was access or continued or future access, would there be any reason not to go ahead and check and ask for a name check to get up-to-date information?

Mr. SHAPIRO. None that I am aware of.

Senator THOMPSON. All right. So in this case, there were 481 files requested in a series, and all of those requests were not for name checks but for previous reports.

Mr. SHAPIRO. Yes, sir.

Senator THOMPSON. All of them were for the purpose of access.

Mr. SHAPIRO. The stated purpose of access.

Senator THOMPSON. And apparently in alphabetical order. So from what you have been telling me, it looks to me like that if, in fact, the purpose is access, you want to give somebody access to the White House, and you are going to make any effort at all, you would want a name check. You would want to see whether or not that person has had any problems up to the date of the request. Is that not a normal assumption?

Mr. SHAPIRO. It is an assumption that I am not entirely able to speak to one way or the other because I don't know everything that goes into the White House side of this. But I follow your logic, Senator. I don't dispute it.

Senator THOMPSON. You can't dispute that, can you? But here, again, they didn't ask for a name check. Although they were saying that the purpose for this request was access, all they wanted was a copy of the previous report. Now—

Mr. SHAPIRO. No. I should say, Senator, that, of course, all of the employees, White House employees and Federal Government employees, are subject to reinvestigations on a 5-year cycle.

Senator THOMPSON. Sure.

Mr. SHAPIRO. And I don't know whether a decision was made—and I can't speak to it—to just wait for the next reinvestigation in the regular course or not.

Senator THOMPSON. Well, it is unlikely that was the case in 481 instances, isn't it?

I guess the point I would make, not trying to make too broad a point, from the uncertainty that you have here today and from what I know about it, I am a little bit more certain that this is kind of an eyebrow-raiser, especially when you have got people there who clearly are not part of the current White House. You have all these former political type people—James Baker and all that. Everybody knows they are not there now. If you are getting information on them, you would want to do a name check, if really what your purpose was was access.

I would think that someone at the FBI processing this, for that person it would cause a question to be raised. Would you not think so?

Mr. SHAPIRO. I would have thought so, and when I and the team with me interviewed the people here at the FBI who were involved in this, they answered as follows: That, first of all, very few of the names on this list meant anything to them. James Baker was one, and one that they recalled standing out, but the vast majority of them are not names which someone other than a devoted political junkie, I submit, would necessarily recognize. But they did note a high volume of—

Senator THOMPSON. What about somebody who had worked in many of our past national Presidential campaigns?

Mr. SHAPIRO. Right, which doesn't speak to the people in the FBI who have been doing this same job for 30 years.

Senator THOMPSON. That is true. That is true.

Mr. SHAPIRO. And are obviously nonpolitical, professional employees.

They did notice a large volume of requests. They attributed that to—rightly or wrongly, they attributed that to the fact that when an administration goes out, they clear their files out—this is their understanding of what happens—and that a new incoming office seeks to fill up their personnel folders for all of their on-board employees. They didn't question—and part of what I found and the Director criticized—the Bureau corporately for is the deference that led us not to question at all these sorts of requests, whether they came in large numbers or small numbers.

Senator THOMPSON. Well, as a matter of fact, you did raise a question with the personnel office, didn't you? Didn't somebody call over there and say, look, do you guys know what you are doing?

Mr. SHAPIRO. Yes.

Senator THOMPSON. These are all requests for previous reports. You know, if you just request a previous report, we are not going to do a name check?

Mr. SHAPIRO. You don't get an update.

Senator THOMPSON. And they are responsible. They said, yes, we know what we are doing.

Mr. SHAPIRO. That is right, Senator. I stand corrected on that. At one point in—it was unclear whether it was in the course of this or a little bit earlier, but in roughly the same time frame, someone from the Bureau called over and communicated: Do you understand all you are going to get are the reports and not an updated search? And the response came back—they attribute it to Craig Livingstone—we understand.

Senator THOMPSON. It was highly unusual to get that volume of requests for previous files?

Mr. SHAPIRO. It is unusual both before and after, yes, sir. For instance, just by way of comparison, in 1995, in the entire year, only 20 copies of previous reports were requested. Since June 1995, not a single request has come in for copy of a previous report.

Senator THOMPSON. All right. Well, I think that puts it in perspective.

Also, on this form, these forms that they were sending—and we need to understand that these were 330 separate pieces of paper. This wasn't a list they sent over to you. These were individual pieces of paper for these individual people that they sent over.

Mr. SHAPIRO. That is correct, sir, 480.

Senator THOMPSON. Altogether. And it says the person is being considered for a White House staff position, Presidential appointment, and third is blank. And in every case they typed in "Access." And then they put a letter by it, which was some kind of a code. Right?

Mr. SHAPIRO. Which the FBI employees understood to be some kind of a code.

Senator THOMPSON. Well, you called over there again, didn't you, and said what does this mean? What are these high number of I's here?

Mr. SHAPIRO. On previous codes, we had asked, what are these I's, what are these C's, and they had answered—it is not my recollection of the testimony of any of these people that anyone specifically requested as to the S's, and all of these came over and said "Access (S)."

Senator THOMPSON. Well, I see one here that—well, your Exhibit No. 1 here says G.

Mr. SHAPIRO. Yes, but this is not one from the series, sir, and this also asked for a name check.

Senator THOMPSON. OK. So you inquire about the I's and found out that they were interns.

Mr. SHAPIRO. Interns, and C's were contractors. The working assumption—and I stress the word "assumption"—of the FBI employees was that S was a code that stood for staff. But they did not ask that question, and they don't know for sure.

Senator THOMPSON. Well, they certainly should have, shouldn't they?

Mr. SHAPIRO. Absolutely.

Senator THOMPSON. So in those two instances, you did or your people did raise the question. You called on at least a couple different occasions and asked what these codes stood for, but you didn't call to see what the S code stood for. And as far as we know, we still don't know.

Mr. SHAPIRO. We do not know today.

Senator THOMPSON. So, of course, the Bureau has some responsibility under the Privacy Act, that the requests that are coming into you comply with the Privacy Act?

Mr. SHAPIRO. The Bureau has a significant responsibility, I would submit—

Senator THOMPSON. Right.

Mr. SHAPIRO [continuing]. Not just under the Privacy Act, but beyond that.

Senator THOMPSON. That is right. So here we have a situation where it was highly unusual in terms of volume; it was highly unusual in terms of the fact that previous reports were being asked for instead of name checks, or a combination of the two. I assume it was highly unusual in that they were using some kind of code that you didn't know what it meant. And yet you say that the process was the same, so the FBI doesn't really bear any responsibility—

Mr. SHAPIRO. Absolutely not—

Senator THOMPSON [continuing]. From that standpoint at the lower level, and I won't debate at this point where the level ought to start. But, clearly, it looks to me like one could make a case, es-

pecially with regard to the people there—and I don't cast any aspersions on them. I am sure they are good people. But they have been there for years. They have seen how it operated in times past. They knew the unusual nature of what was going on here, and I think you rightfully pointed out that the Bureau got into the position of showing unusually high or significant deference to the White House because they were the White House. And we have been seeing this go on in this country for 40 years now, and this is no different.

Mr. SHAPIRO. Yes, sir. But let me just stress—I know you didn't mean to suggest otherwise, but—that it is my position, it is certainly the position of the Director of the FBI, that the Bureau bears a profound responsibility for this, and we are not seeking to shirk that responsibility.

Senator THOMPSON. All right, sir. Thank you. I appreciate your answers.

Who is next?

Senator BIDEN. Did you ask yet?

Senator FEINSTEIN. I did not have an opportunity on a second round.

Senator THOMPSON. Senator Feinstein.

Senator FEINSTEIN. If I may, let me ask each of you this question. Since Mr. Dale presented his testimony, I would like the answer to this. If Mr. Dale's name began with a V instead of a D, would you assume that his file would not have been requested based on the modus operandi that was present in the requesting of these files?

Mr. MILLER. From everything I have heard, yes. I mean, no, it would not have been requested. I am sorry.

Senator FEINSTEIN. Would not have been requested.

Mr. MILLER. Would not have been requested.

Senator FEINSTEIN. Mr. Shapiro?

Mr. SHAPIRO. I would agree with that, Senator. It is clear or it is at least apparent that this series ended or was stopped at Go, and was his name beyond that, it would not have been sought.

Senator FEINSTEIN. I think that is a significant point, so that largely because his name happened to be D, his file was requested.

I want to go back to the transition and the chaos of the transition in a White House. Both of you have testified that you have no knowledge of what happened to the Bush files except to know that none of the Bush files, to this day do you know where they are. Is that correct?

Mr. MILLER. That is correct.

Mr. SHAPIRO. That is basically correct, Senator.

Senator FEINSTEIN. Do you have any knowledge of how many names were in the Bush files?

Mr. SHAPIRO. I do not.

Mr. MILLER. No, not offhand.

Senator FEINSTEIN. Can you hypothesize? Would it have been thousands?

Mr. MILLER. If you are talking about White House access—

Senator FEINSTEIN. That is correct.

Mr. MILLER [continuing]. In the Bush period, then who had passes, yes, I would say it would be in the thousands.

Senator FEINSTEIN. All right. So the Bush files are gone. There are thousands of passes out there. A new administration comes in, albeit perhaps in a somewhat unsophisticated and clumsy way, begins to try to clear up who has clearance to be on premises and who doesn't. And according to your testimony, Mr. Miller, either the counsel or the security office routinely would ask for files. And that request apparently was made for files, and at least 481 going up to the initial G were sent over. Is that a fair assumption?

Mr. MILLER. No, Senator, I—

Senator FEINSTEIN. Please correct me. I want to know what the facts are.

Mr. MILLER. The Secret Service really—with these files, we don't have part of this requesting files from the FBI or the Office of Personnel.

Senator FEINSTEIN. All right. You don't do—I didn't say you did do the requesting. What I said is either the White House counsel or the White House security office would make that request.

Mr. MILLER. Yes.

Senator FEINSTEIN. As you just testified, that was standard operating procedure. And nobody knows how many Bush holdovers there were in the White House. Is that correct? At least neither of the two of you do?

Mr. MILLER. The exact number, no.

Mr. SHAPIRO. Neither of us know.

Senator FEINSTEIN. And so one could assume that there were Bush holdovers. Is that not correct?

Mr. SHAPIRO. I think it is clear that there were at least some Bush holdovers. I just can't speak to how many.

Senator FEINSTEIN. Therefore, this kind of conspiracy that is being drawn by some—by some—that there was some malevolent purpose to ask for these files—the way I quite honestly look at this is that there was just an honest effort to try to see who was cleared and who wasn't. Do you have any evidence that that is not the case?

Mr. MILLER. I have no evidence that that is not the case, no.

Mr. SHAPIRO. Senator, I would say I very explicitly said I am not in a position and I have no evidence to draw any conclusions about the motivations of the White House employees on this.

Senator FEINSTEIN. May I ask, then, that at a separate time in writing you provide me with your analysis of how many Bush holdovers there were at that time?

Mr. SHAPIRO. I would be happy to comply with that. I don't think that the FBI is in possession of that information. We depend upon the—or at least have, before we changed some of the procedures, the White House's designation of who is an on-board employee and who is not. We don't have separate lists of on-board White House employees, and so we can't independently discern whether a request comports with someone who is an on-board employee, or, of course, there are other reasons to seek information as to the President is considering appointing someone.

Senator FEINSTEIN. Are you saying that the FBI then would have no knowledge of who is working in the White House who happened to work there during the Bush administration?

Mr. SHAPIRO. That is exactly what I am saying. I am not saying we couldn't obtain that information. We would go to the Secret Service or we would go to the White House and conduct an investigation to get that. But from our own files, we do not keep personnel listing for who are on-board employees at the White House at any time.

Senator FEINSTEIN. And the Secret Service?

Mr. MILLER. We will comply with your request. I do have one clarification, please, and that would be there are a lot of career people who work there who really—they are not Republican administration people or Democratic administration people. And I don't know whether—

Senator FEINSTEIN. And they are part of this 481 on the list as well. Is that not correct?

Mr. SHAPIRO. They may be.

Mr. MILLER. They may be, yes.

Senator FEINSTEIN. I mean, they could be gardeners, they could be housekeepers, they could be cooks, they could be any number of people.

Mr. MILLER. Yes. If you want me, if you want us to include those people, this would be a pretty intensive—

Senator FEINSTEIN. That is what I am interested in, is how many of the 481—since the 481 have become such a big deal—are part of the Bush administration normally working in the White House and probably will continue to work in the White House, just so we can sort that out.

Mr. SHAPIRO. Senator, if I may, let me just state so it is clear, the White House counsel's office—and, again, I don't have a means to independently verify this, but I have no reason to doubt it. The White House counsel's office has said to me in response to my inquiries that out of this list—and I should say, although we have been saying 481, because it is a duplicate it is actually 480. Out of that list, they have identified 54 people for whom there was continued employment, and so there was a proper reason to request it. In addition to that, they have said in response to my inquiries that there are 17 more that are as of now inconclusive. Even the White House, it turns out, does not have ready access to answer the question who as of any given date was a White House employee. I am told that in order to respond to my inquiry on that, they have armies of people poring over microfiche trying to establish it.

Senator FEINSTEIN. I understand. What I am trying to establish—and maybe I didn't make it terribly clear—is not only Bush administration holdovers in terms of administrative personnel, but also the normal White House staff, those people who are not going to be new but who are going to continue on.

Senator BIDEN. The upstairs maid.

Mr. MILLER. May I ask one more question to clarify this?

Senator FEINSTEIN. Yes.

Mr. MILLER. You had asked for a reply for the transition. Is that correct? Or am I misreading that? For the transition period from one administration to the other?

Senator FEINSTEIN. That is correct, people that went—

Mr. MILLER. OK. And then you mentioned the 480 names. I don't know that there are any career people in there. I may have misspoke there, but I don't know that there are any career people in that part. I was speaking more of the transition.

Mr. SHAPIRO. You don't know one way or the other.

Mr. MILLER. I don't know one way or the other.

Senator FEINSTEIN. Well, perhaps you could find out and let us know.

Mr. MILLER. Yes.

Senator FEINSTEIN. Thank you very much.

Senator THOMPSON. Wouldn't part of that, too, be how many were there as of December the 6th, at the time the requests started being made how many hold-overs were left in the Clinton White House?

Senator FEINSTEIN. I think that would be useful as well.

Mr. SHAPIRO. As of whichever date the request was submitted.

Senator FEINSTEIN. Thank you.

Senator THOMPSON. Senator DeWine.

Senator DEWINE. Mr. Miller, let me ask you if you could explain for us, if you could, what the quality control system is at the White House to keep these FBI files. What system is there? Where are they stored? Who has access?

Mr. MILLER. Senator, I don't know because we only have a small part of the files. That is, when the background investigation is finished by the FBI, it comes to the White House Office of Personnel Security. We review this file. We have people at the White House who just review it for our own protective interest.

Once we have determined that this person has not indicated to us in any part of this investigation that they are something that we would consider a problem or a threat to the President, that is the only part we have with those files.

Senator DEWINE. But you are not involved in any quality control of how it is stored, how it is kept, who has access to it once it passes beyond you?

Mr. MILLER. No.

Senator DEWINE. Don't have anything to do with it, don't know anything about it?

Mr. MILLER. No.

Senator DEWINE. Not your job? I mean, I am not being facetious.

Mr. MILLER. No. I don't want to say I don't know anything about it, but I have not seen the room. I have not seen the security part of it.

I know that it is supposed to be secured and things like that. I would hate to testify to something I have not seen.

Senator DEWINE. You don't know what procedures are set up.

Mr. MILLER. No, sir.

Senator DEWINE. There is no protocol that you are aware of.

Mr. MILLER. No, I don't.

Senator DEWINE. OK. Mr. Shapiro, tell me about when a new administration comes in. Let us take, for example, when we move from the Bush administration to the Clinton administration and we are in transition. How do you work it out with them? How does the FBI work it out with this new administration that is not yet an administration about clearances, about FBI files?

Mr. SHAPIRO. As I understand—

Senator DEWINE. They are not a part of the Government yet.

Mr. SHAPIRO. I am sorry?

Senator DEWINE. They are not Government yet. They are going to be.

Mr. SHAPIRO. Yes. Two answers to that, that I am aware of, and there are probably more than are not. First of all, at some point during the transition, I am told, an attorney working with the transition team came by the FBI, was briefed on how we handle these various requests for name checks, for full field investigations, for the entire range, so they would know what the range of service is, if I can put it that way, that the Bureau provides in this area.

In addition, during the transition, the FBI or, I should say, the Department of Justice entered into a memorandum of understanding with the Clinton transition team that actually speaks almost entirely to requests for and handling background investigations, but it speaks slightly more broadly to the entire area.

Senator DEWINE. So you have, then, during that transition period a memorandum of understanding.

Mr. SHAPIRO. Yes, sir.

Senator DEWINE. Then does that carry over once you hit January 20 and you are into the new administration?

Mr. SHAPIRO. Well, Senator DeWine, I have asked that question of everyone. It doesn't by its terms do that, but everyone understands the same rules continue to apply. Let me leave it at that.

Senator DEWINE. How does the FBI, then, monitor that agreement that you have continued compliance with that?

Mr. SHAPIRO. Well, in the past, I would have to say that hardly, if at all, do we monitor that agreement; that from last week forward, we have built in, Director Freeh has built in and Deputy Attorney General Gorelick have approved, to mold some procedures to try and monitor it, some internal reviews both by my office and by the FBI Inspection Division to monitor our side, as well as establishing some necessary dialogs between the FBI and the White House about issues you were raising with Mr. Miller before about what are the right ways to handle the retention and/or archiving of FBI files, and also a further dialog which we hope to soon initiate with the Secret Service and the White House.

Senator DEWINE. That is prospective.

Mr. SHAPIRO. That is going forward. Yes, sir.

Senator DEWINE. Right.

Based on your review of the facts in this particular case, do you believe looking back that the White House did comply with that memorandum of understanding?

Mr. SHAPIRO. Well, it seems clear that they did not. What I cannot say is whether they intentionally did not or negligently did not.

Senator DEWINE. It is clear they did not.

Mr. SHAPIRO. It is clear that information was requested for other than official purposes.

Senator DEWINE. Let me go back, if I could. It is my understanding from both of your testimonies that neither the FBI nor the Secret Service knows where this list came from.

Mr. SHAPIRO. That is correct, sir.

Senator DEWINE. It doesn't mean anything to either one of you by looking at it.

Mr. MILLER. That is correct.

Senator DEWINE. That is what your computer people tell you, correct? You have reviewed this with them, and you don't recognize it.

Mr. MILLER. That is correct. Right.

I should say there is not even an allegation that that list emerged from the FBI. So we haven't—

Senator DEWINE. But you are not claiming it, though, right?

Mr. MILLER. We are not claiming that list.

Senator DEWINE. Explain to me, and I know you have gone through this a little bit, but I am not sure I quite understand, Mr. Shapiro, how the list came to the FBI, and I guess it didn't even really come as a list. It comes in the single sheets, right?

Mr. SHAPIRO. That is absolutely correct, Senator DeWine. It came as 480 individual requests. I mean, some of them, no doubt, it is quite clear many of them would come on a single day, but as to each person, there would be a separate form with that person's name on it, and from my review of the FBI computer records of the receipt of those requests, records we have kept since 1990, I have been able to identify at least 480 during that narrow time period and asking for the same material.

Are you asking for the mechanics of how we receive those?

Senator DEWINE. No. Let me just read this to you, and then let me follow up with a question. This is directly from your report. "Between September 6, 1993, and February 3, 1994, amid all of the other requests flowing in from the White House, the EASU received no fewer than 481"—you are saying now 480—"requests which bear the characteristics of a single series. These requests, when parsed out from the normal traffic of requests, arrived in nearly perfect alphabetical order, from A-a to G-o, all seeking copies of previous reports and all providing the same justification, access."

First of all, that just on its face was unusual, right?

Mr. SHAPIRO. It absolutely was unusual.

Senator DEWINE. This is December 6, 1993. This is not December 6, 1992. We are now into administration, 11 months, correct?

Mr. SHAPIRO. Yes, sir.

Senator DEWINE. What can you tell us about who originated—and I understand you have not interviewed people at the White House. I understand that, but from what you know, what can you tell us about the origins, then, of each one of those sheets or that series of sheets?

Mr. SHAPIRO. Well, I can tell you, definitively, close to nothing, partly because of the inadequacies in the form as it presently existed.

I can tell you, although in this I have no greater expertise than anyone else, that from public reports and from statements and affidavits released that Mr. Marceca says that he prepared these requests working off of some list, but I am entirely unable to either verify or contradict that.

Senator DEWINE. So, as far as you could take it back—and again, this is not even on direct interviews, but based on other information—as far back as you can take it is Marceca, correct?

Mr. SHAPIRO. That is correct.

Senator DEWINE. That is the only source you have got, and this, again, is from—

Mr. SHAPIRO. And that is from affidavits released publicly. That is not from interviews, since we didn't conduct any.

Senator DEWINE. You did mention, though, there is obviously more than paper contact between your FBI employees and people at the White House. What have your own people told you in regard to that? Did they tell you who they talked to, where the request came from? Senator Thompson referenced two different times at least that we know of that there were inquiries back from the FBI saying, hey, what is the deal, do you really want this, et cetera. What have you found from your own employees about what happened at the White House or who they were dealing with?

Mr. SHAPIRO. Very little. Let me tell you what I have found. For the most part, this series works—I'm sorry—this process works on paper, and although, as Senator Thompson pointed out, there have been over the years, including within the last 3 years, a number of inquiries about one particular thing or another. For the most part, it comes in on paper, and it is sent back on paper, at least it previously was, and they come in anonymously and they go out anonymously.

One thing that I did learn is that there was—and the memories of the people involved in this are not entirely precise, but there was a communication either just before this list began or at the beginning of the list that there would be a large volume of requests coming in and they needed to be handled in the normal—you know, without undue delay.

Senator DEWINE. Who did that piece of information come from?

Mr. SHAPIRO. Who did it come from? Who gives me that information?

Senator DEWINE. Well, I don't care about that, but I want to know who your FBI person says told him or her that.

Mr. SHAPIRO. As far as—they say from someone in the Office of Personnel Security, from Mr. Livingstone's office, but they do not recall who it was specifically who advised them.

I asked that question, Senator, because one of the research analysts said not only was there a large list, but we felt we had to get it done rapidly, and led me to ask what gave you that impression, and they said, well, there was this conversation, don't let these drag out. That is not a quote, but that was the answer.

Senator DEWINE. Besides that conversation, is there anything else your employees or FBI agents can tell us, can tell you about what is going on at the White House, any names or anything else?

Mr. SHAPIRO. Not about this series. I mean, they can identify who some of their authorized contacts at the White House were, for instance, Craig Livingstone and a couple of people in his office, but there seem to have been precious little—

Senator DEWINE. Authorized contacts meaning what?

Mr. SHAPIRO. Meaning the way the system was set up, there are only a limited number of people in each agency, whether it is the

White House, the Department of Agriculture or whatever, who can seek this kind of information from the White House.

Senator DEWINE. Who designates those?

Mr. SHAPIRO. I believe those are designated back and forth between, at the beginning of each administration, between this unit that handles it and, for instance, the White House counsel's office or the Office of Personnel Security, which is a component of the White House counsel's office, and done with each agency.

They recognize a certain number of names. They say if it comes from an office other than one they recognize, they wouldn't handle it. If it came from even a high-ranking person somewhere else, they wouldn't respond.

Senator DEWINE. These designated names, names that were designated by the White House counsel office, are the only people, then, that the FBI is to deal with on this issue?

Mr. SHAPIRO. Yes, sir.

Senator DEWINE. And who were those names? Who are those individuals?

Mr. SHAPIRO. At the time—I have the list as of March 1996. I don't have it present for this date, although I can obviously supply that, but it included Mr. Livingstone, his executive assistant, and a third individual by the name of Denbo. It did not include Mr. Marceca.

Senator DEWINE. And his executive assistant is who?

Mr. SHAPIRO. I have it, sir. I will supply you that name as soon as I find what I did with that piece of paper.

Senator DEWINE. And you can get us the names back in December, if they were different? I don't know if they are different.

Mr. SHAPIRO. I can certainly endeavor to do that. If those records have been maintained, and I suspect they have, we will provide them to you.

Senator DEWINE. All right. Thank you.

Thank you, Mr. Chairman.

Senator THOMPSON. I don't think Senator Abraham has had a first round yet, has he?

Senator BIDEN. No, go ahead.

Senator THOMPSON. Senator Abraham.

Senator ABRAHAM. Thank you.

I want to start, Mr. Miller, with you and try to see if I can get a better understanding of exactly what happened here.

As I understand it, a list was requested from you that pertained to passholders. Was that—

Mr. MILLER. We routinely provided the White House Office of Personnel Security with an E-pass data base list.

Senator ABRAHAM. OK.

Mr. MILLER. And this list is comprised of active and inactive pass-holders, and for us it is an administrative list. For the White House, it is a check to make sure that we are both on the same wavelength as far as issuing passes and who is active and who isn't active.

Senator ABRAHAM. OK.

Mr. MILLER. This was routinely done at least once a month.

Senator ABRAHAM. But that would not be the list that we are dealing with here. Is that correct?

Mr. MILLER. I am not sure what list we are dealing with here. I mean, I have not seen some list.

I mentioned earlier that this E-pass data base list is, as the computer people tell me, a living document. So it is changing every day.

Senator ABRAHAM. Right.

Mr. MILLER. So we don't have the capability in this system to print an E-pass data base list from last week or a month ago on that particular day because it is always constantly changing.

Senator ABRAHAM. How many names would be on it, roughly?

Mr. MILLER. I think we said 24,000.

Senator ABRAHAM. So, in the month before the first requests was made, a list would have appeared at the White House with 24,000 names on it, correct?

Mr. MILLER. Approximately that much, yes.

Senator ABRAHAM. All right. Now, by the time we went from A through G, how many requests were made? Was it about 400?

Mr. MILLER. I don't—I don't—I don't follow that, Senator.

Senator ABRAHAM. What I am saying is, the amount of requests that were made until somebody determined that the requesting should cease was about 480, correct?

Mr. MILLER. About 480 from that time period, yes, sir.

Senator ABRAHAM. In this A through G. Now, assuming that somehow during the process of compiling the master E list there was a unique number of names who were H through Z, we can probably extrapolate and conclude that had the process finished, there might have been 1,200 or so requests, or 1,500 maybe, tops. Right?

Mr. SHAPIRO. It does not appear to be on a trajectory for 24,000.

Senator ABRAHAM. Right. So somehow between the list you gave the White House and the effort that was made to begin getting FBI files, something in the vicinity of 23,000 names were determined not to be—assuming your list was at some point the basis that was used for making these requests, 23,000 names didn't survive. Somebody made a cut. Is that—I mean, that would be the—

Mr. MILLER. That is feasible, yes.

Senator ABRAHAM. It was indicated earlier today by someone that the Secret Service list was flawed. I just wanted to clarify in my own mind. Flawed or not, somebody somehow, and for reasons—I don't want to—we are not at the point of speculating here, but somehow that list became a smaller subset, a very significantly smaller subset.

Now, the next question I have is the implication here has been, I guess, that at least the principal reason that the FBI files were requested pertain to who should have access passes. Is that, Mr. Shapiro, as you understand it the reasoning? I mean, access was the—

Mr. SHAPIRO. Well, I would only quibble with that ever so slightly. Maybe not who should have access passes. If they were holdovers, I would presume they already would have had passes, but who should continue to have access to the complex.

Senator ABRAHAM. OK. Well, Mr. Miller, did you not deactivate the passes of a substantial number of the people that were on this list of 480 at some point and in many cases prior to August 1993?

Mr. MILLER. Yes.

Senator ABRAHAM. So the idea that we would have been seeking information pertaining to access would have happened—I mean, you already had deactivated the access of these people. They couldn't walk up to the White House and make that request with an old pass. The pass would have not been a valid one. Is that correct?

Mr. MILLER. It would have been invalid, correct.

Senator ABRAHAM. All right. So, if somebody wanted to sort of start this process, if they really were trying to determine access, could they not have simply requested from you a list of individuals who had deactivated at the point when this process began?

Mr. MILLER. They could, yes.

Senator ABRAHAM. So all the people whose FBI files were requested, who had already had their passes deactivated could have been ascertained before the FBI file was requested, is that correct, if a request had been made for the list I just discussed?

Mr. MILLER. Yes.

Senator ABRAHAM. All right. And wouldn't anyone who worked at the White House Personnel Security Office have known that they could have obtained a list of those whose passes were deactivated?

Mr. MILLER. That is correct.

Senator ABRAHAM. Thank you.

My next, I guess, questions go to sort of as a spinoff of that. Maybe it is not even as relevant now based on what you have said, but I guess the other question I was going to ask is that if your goal was to determine who should have passes, recognizing that obviously there were holdover employees and there were a large number of people in whatever this initial list was who no longer worked at the White House, as opposed to seeking FBI files, could the White House Personnel Security Office have not started by simply comparing this list of 480 with its own active personnel list?

Mr. MILLER. No. 1, I don't know whether they have a data base in that respect. They may or may not. I am not sure, but—

Senator ABRAHAM. An alphabetical list of the people who work in the White House, they would not?

Mr. MILLER. Certainly, the list, the E-pass list that we provide them routinely would have that in there.

Senator ABRAHAM. They would presumably, somebody—I mean, there is somebody who writes—payroll, I assume, would have had some kind of list. I mean, I don't know. Maybe you are the wrong gentleman to ask this of, but it seems to me that at the Secret Service or the FBI, there is someplace a list of the people who are actively on the payroll, is there not?

Mr. SHAPIRO. There certainly is. It seems safe to assume that, Senator.

What I don't know, for instance, is whether that list exists in any one place. For instance, would interns or others who might have passes be on a payroll list? There are passes sometimes obtained for, as I understand it, regular visitors or contractors, but it would seem that one could construct that list even if it doesn't exist in a single data base.

Senator ABRAHAM. Well, it would seem to me that short of going to the FBI to get personnel security files, you could have matched

up pass-holder lists, both current and noncurrent, with some form of personnel records before you went to the step that is obviously in question here, and I guess it is not clear to me. Maybe we will find out when we talk to the gentlemen themselves who are involved in this why these other approaches weren't taken.

Let me switch off of that, but I do make this point simply because the impression that has been created is this was all sort of an innocent effort to decide who ought to have passes. It just seems to me like there are a lot of ways by which this information on these folks could have been determined, short of getting FBI files, and frankly a lot more obvious ways to me. I guess maybe not. We will find that out later.

Mr. Shapiro, when did you exactly find out that at your level, at the higher levels in the FBI, that hundreds of these FBI files had been sent over under conditions that are certainly dubious, if not illegal?

Mr. SHAPIRO. At approximately 6:15 on the evening of June 6.

Senator ABRAHAM. You remember that exactly.

Mr. SHAPIRO. I received at that point a call from Jane Sherburne, special counsel to the President, who I had previously advised the office that I was about to conduct this inquiry, and she called to tell me that they had a considerable number. She at that point didn't have the number, but of additional files that they were seeking to return to the FBI.

Senator ABRAHAM. What did the FBI do upon finding that out?

Mr. SHAPIRO. I sent one of my deputies and an FBI inspector over, met with Ms. Sherburne and one of her associates, as well as a couple of employees of the Office of Record Management at the White House. They went through just so that both parties would have a matching inventory of what was being turned over, and we brought those boxes back to the FBI.

Senator ABRAHAM. Then you began a process of internal scrutiny to determine how this all had happened?

Mr. SHAPIRO. Yes, sir. I had just briefly before that begun that process, but I sort of redirected that process when the number went from 1 or 2 to 335.

Senator ABRAHAM. You indicated at the outset, and I would like you to just maybe reiterate, what your conclusions are with respect to FBI personnel and their involvement in this.

Mr. SHAPIRO. Well, my conclusions are that the FBI bears a significant debt of responsibility for this.

Senator ABRAHAM. You sort of differentiated between people who were at the operations level.

Mr. SHAPIRO. I did, and I do. I believe that the people at the operational level, although there were some indications which is why as was pointed out to me I slightly amended my statement to absolve them of significant failings—I wouldn't absolve them of all failings, but that there was an absolute and total abdication of management responsibility of any oversight of having the sort of policing of the system that would have prevented this from occurring in the first place.

Senator ABRAHAM. Let me ask you this. If you were in this process of inquiry to discover that the people, both at the operations level as well as the oversight level, had discovered the inappropri-

ateness of this 2 years ago and not disclosed this to people at your level for that period of time, what do you think the position of you and others in the higher levels of the FBI would be toward those individuals?

Mr. SHAPIRO. Well, I think we would obviously be very significantly troubled by that; that that would be quite serious misconduct, and it would be dealt with accordingly.

It is absolutely clear to me that Director Freeh wouldn't tolerate that for a second.

I should say that we, of course, focussed, and we have all focussed here on this 480 list and why that shouldn't have been readily apparent to those people in there. We have called these lists out of a much larger stream of traffic. To them, although they noted this, it was part of a flood that amounted to thousands of requests of all types.

So, in retrospect, it may seem a little more clear looking back.

Senator ABRAHAM. I understand why from your perspective it was discovered when it was and why in the flood of things it was not in some way uniquely clear to the people involved.

However, as I have made this point now a couple of times already, it was obviously known within the White House that this conduct was going on, and it was stopped when it was discovered that it had been done and it was in violation potentially of the privacy of various, 400-plus, individuals, and yet it would appear that nothing happened other than the process ceased for approximately 2 years until such time as through other types of disclosures this came to public light, and now we have one individual who has taken administrative leave with pay and a change in the process.

So I want to contrast what I think would be the behavior of the FBI here, and I guess you have now clarified it, with what I think to be a very serious question as to how this was handled for 2 years in the White House.

Let me move to just one other thing here, one or two other things, actually. You have indicated that the magnitude of these requests was considerably greater than the normal stream of traffic, but that for reasons which you have explained, and I don't need to ask you to go back through again, they were complied with.

There was an earlier statement made or points were made, I guess, that, in fact, these summaries were not the full raw file of these individuals, which we know to be in many cases extraordinarily extensive, especially for some of the people that were involved who obviously were scrutinized at a great level.

It has been sort of indicated that this somehow demonstrated that there wasn't a desire to have greater information, but I wonder, what do you think would have happened of the raw files themselves had actually been requested at this magnitude? I mean, besides the fact that you would have to probably go out and rent trucks to take them over there. I mean, would it possibly have come to light sooner?

Mr. SHAPIRO. Well, we would not have complied with that request, I feel fairly confident. The FBI does not provide raw files under hardly—all but very, very few circumstances.

As one of the Senators was pointing out to me before, we don't provide them even to the Senate, other than in the custody of an FBI agent, and we don't provide them on request.

Senator ABRAHAM. So it is fair to say that even if there had been a desire to have obtained the raw files, that wouldn't have happened. We wouldn't have had this occur. There would have been either a rejection of the request or, perhaps even at a higher level, an awareness very soon in the process that that was going on. Is that correct?

Mr. SHAPIRO. I feel confident that that request would not have been complied with.

Senator ABRAHAM. So the earlier statements that, well, gee, they only requested the summaries versus the raw files somehow is a significant statement about the intent of the people who made the request. The fact is, if the other requests had been made, they simply wouldn't have been honored. Is that correct?

Mr. SHAPIRO. That is correct. Yes, that is correct.

Senator ABRAHAM. Finally, I guess the other issue that has been raised here that I am not quite sure of, although I think I have a sense of it, is that somehow because these requests came to you in alphabetical order, it suggests, as it certainly could, that it was simply a bureaucratic process going forward.

Just speculating, I mean, if I was trying to put together some special files on people that were enemies, I doubt I would have sent over, instead of "Access," and written the word "Enemies" on there. I am wondering, I guess, in terms of the process. Is it unusual if you had a bulk request since the lists, Mr. Miller, that are given to the White House, I assume, are in alphabetical order? Is that correct?

Mr. MILLER. They can be, yes.

Senator ABRAHAM. I mean, if there was a master list and a subset was created, then it is surprising, one way or the other, that it might be then subsequently reduced in alphabetical order because that is the way it was probably received.

Mr. MILLER. Right.

Senator ABRAHAM. OK. Thank you.

Mr. SHAPIRO. Senator DeWine.

Senator ABRAHAM. Yes.

Mr. SHAPIRO. I am sorry. Let me just answer the question you put to me before and I couldn't find the document. The name of the executive assistant in the White House Office of Security on our list is identified as an Edward Francis Hughes, and Mr. Denbo's first name is Jonathan.

Senator DEWINE [presiding]. Thank you very much.

Senator Biden.

Senator BIDEN. Thank you.

To the best of your knowledge, Mr. Shapiro or Mr. Miller, did the Reagan administration when it came into office send requests for previous reports to the FBI? That form has been around now for four Presidents.

Mr. SHAPIRO. More than that.

Senator BIDEN. More than that.

Mr. SHAPIRO. Yes. Since President Johnson, some version of that form, which you would readily recognize as being the same form, has been around, with slight changes.

The best of my information on that, and we do not have computerized records or even segregated records going back that far, but the people in the unit, some of whom, many of whom, in fact, all of whom working on the White House desk had been there at the time of the Carter-Reagan transition was that they would receive both an increased volume of requests generally and requests for previous reports at the time of a transition.

Senator BIDEN. Now, the point that Senator—I thought it was a good point, at least on its face it sounded pretty good to me—that Senator Thompson was making is that why would anybody bother to ask for a previous report relative to access when they could have a name check done. That meant he went to great lengths to point out that it didn't seem to make sense to ask for a previous report for access purposes; that the better way to do it would be to ask for a name check versus a previous report for purposes of access.

Which is easier for the FBI to do in terms of time?

Mr. SHAPIRO. Provide copies of previous reports.

Senator BIDEN. Yes. So it is quick that way, right?

Mr. SHAPIRO. One should get a response more rapidly. Yes, sir.

Senator BIDEN. Now, whether or not it was the same volume, I assume Carter asked for previous reports from the Ford White House.

Mr. SHAPIRO. I am assuming. By that point, the recollections are fairly easy.

Senator BIDEN. We know that Reagan asked for at least some previous reports for access purposes. Now, Bush might not have because there were two Republican administrations back to back. Do we know whether Bush asked for previous reports for access purposes?

Mr. SHAPIRO. Well, they said generally, and perhaps I didn't ask them that specifically, but should have, that changes of administrations always engendered at least some requests for previous reports.

Senator BIDEN. The recollection of your staff was that this administration asked for more previous reports than previous administrations.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. One of the questions I asked my staff when I was trying to get ready to find out the facts here, why would you want previous reports at all, any administration?

It goes to the question I have for you, Mr. Miller. One of the things that confused me is this list that you have that is a living list of 24,000 people, roughly, some of whom are current pass-holders and the pass is still valid, as they can still get in and out of the White House, and some of whom are no longer current pass-holders, but at one time were. Right? That is what the list is made up of?

Mr. MILLER. Yes.

Senator BIDEN. Now, I understand, and I may be wrong in this, majority counsel, I guess with minority, gave your folks an alphabetical list that went from A-b to G-o, and it is not the total list,

I suspect, although it may be, and asked you to put dates next to their names as to when they got changed in your file from an active pass holder to a deactivated pass holder. Am I using the right terminology?

Mr. MILLER. Active, deactivate, inactive. Yes, you are right.

Senator BIDEN. From active to inactive.

Mr. MILLER. Yes.

Senator BIDEN. I have a document in my hand that has in different-type print a list of—well, I will read one name because we are talking about it, James Addington Baker in bold black print, and next to James Addington Baker's name, the former Secretary of State, is a date, 08-26-93.

I am told that your office, the Secret Service, supplied that date, and that date indicates the time at which your computer said he no longer has an active pass. Is that right?

Mr. MILLER. That is correct.

Senator BIDEN. So, if I were doing a background check to determine who should or shouldn't have passes and I am the guy in charge of the personnel security office and I am given a list by you in July 1993, it would have Baker's name on it as an active pass holder, right?

Mr. MILLER. It should have, yes.

Senator BIDEN. Which slash means holdover—

Mr. MILLER. Yes.

Senator BIDEN [continuing]. In the sense that he is still in and out of the White House, right?

Mr. MILLER. Yes.

Senator BIDEN. Or still has the ability to come in and out of the White House.

Now, Mr. Dale's name appears on that list. The reason I picked these two out is because they are celebrated. I mean, they are the two names that have been most often mentioned.

It says Mr. Duberstein was inactive from January 19, 1989, and Mr. Dale, which is obviously before the President even took office—excuse me. Let me find him here. Where the heck is he? Billy Ray Dale, he had the ability to get in and out of the White House as late as 5-19-93. His pass was active until May, 4 months after the President was President.

Mr. MILLER. Correct.

Senator BIDEN. He could have walked in with his pass and gotten in and out up until the 19th of May 1993. After that point, his pass was deactivated.

Mr. MILLER. Correct.

Senator BIDEN. OK. Now, the transition in the White House in the personnel office that makes the request is the security office. There was a Ms. Nancy Gemmell who was a career person, who left the White House and that office on August 13, 1993. President Clinton takes office January 20, 1993. She stays from January 20 until August 13, 1993.

So, any request for previous files or any list off of which was worked, I am told, was a list that Nancy Gemmell had worked up, to ask about previous files or about new hires or whatever. She was the person, I am told, and correct me if I am wrong, was doing this job.

She leaves on August 13, 1993, and 2 weeks later, Mr. Marceca comes on, on August 18, 1993, and he has now got her job, so I am told.

He stays there from August 1993 until March 1994 when Ms. Lisa Wetzl comes on and takes his place. So we have got three players in this office run by Mr. Livingstone, who in the hierarchy of to whom they report worked for Mr. Livingstone, who had primary responsibility, as I understand it, to collect, where appropriate, previous files and seek the generation of new files on new White House personnel that would be coming in, holdovers and new people coming in.

Am I correct so far, to the best of your knowledge? If you don't know, obviously, tell me.

Mr. SHAPIRO. I basically don't know, but that is consistent with my understanding, which is based on public source information.

Senator BIDEN. Do you know?

Mr. MILLER. Same. I don't know personally, but this is what—as you lay this out, this is what I have been reading.

Senator BIDEN. Right.

Now, Mr. Miller, when the Secret Service sends that monthly list of current passholders, do you send all passholders or current passholders? Who do you send it to, this list we keep talking about that you generate once a month?

Mr. MILLER. We give it to the security, the White House Office of Personnel Security.

Senator BIDEN. And that is Mr. Livingstone?

Mr. MILLER. Yes. That is the office.

Senator BIDEN. So it literally goes to him or it just goes to the office? Does it get addressed to somebody? I know this sounds trivial, but does somebody march in and just say to the secretary, here is this month's list, or is it addressed to it or does someone sign for it?

Mr. MILLER. I think, my understanding, I have been told, that they pick it up. They come to our office in the EOB and pick it up.

Senator BIDEN. They meaning someone from—

Mr. MILLER. From that office.

Senator BIDEN [continuing]. In this case, Mr. Livingstone's office, would walk over, identify themselves as from the office of security personnel, and they are given a list.

Mr. MILLER. Yes.

Senator BIDEN. Dumb question, but do you all check to make sure the person coming, asking for the list, is someone from that office?

Mr. MILLER. Well, they know, No. 1, and both offices are very small.

Senator BIDEN. Who is they, now?

Mr. MILLER. The people who have this list. Our White House division knows these people. They know these people personally to start with—

Senator BIDEN. Right, OK.

Mr. MILLER [continuing]. At least recognition.

Senator BIDEN. So you can be pretty sure that when you sent that list once a month that has names and whether their pass is

current or not current, you don't just send them a list that has current pass holders, do you?

Mr. MILLER. If they were to ask for that, there is a special request. They could ask for a list that says give us the current pass holders, yes.

Senator BIDEN. I mean, these people seem pretty dumb. I mean, not dumb. Wrong word. I shouldn't use that word. These people seem to not know their way around very well, and so let me put it this way. Did they at any point, to your knowledge, ask your office for a current pass list?

Mr. MILLER. I personally don't know that, but I would say I would feel confident by saying yes.

Senator BIDEN. Why would you feel confident saying yes?

Mr. MILLER. I have been briefed in the last few days on this transition and how things went, and I think that they did ask not only for the—they were given not only the E Pass, A and I, the active and inactive list, that eventually they realized Mr. Livingstone's office, and I don't know whether he was the one or not—realized that they could get an active list, and that would be—

Senator BIDEN. OK. Do you have any record that you printed out at any time, an active list that went to them?

Mr. MILLER. I don't know if we can do an audit trail on that. Let me ask.

I have been told that the active list was given to them, also.

Senator BIDEN. So, at some point, could you supply for the committee the first date you gave them an active list, say this list right here, this big old list here are all the people who are actively entitled to get in and out, who now have passes that are legit? They can get in and out of the White House. That is what we mean by active, right? Can you do that for me?

Mr. MILLER. I will see if we can do it.

Senator BIDEN. For the record, if you can't do it, tell us why you can't do it, OK?

Mr. MILLER. We will do that.

Senator BIDEN. All right. Mr. Shapiro.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. We have identified—you have identified—we have been talking about this list of 400-and-some names that you have reconstructed based on the coincidence of them being alphabetical and dates concurrent with the alphabet. In other words, you didn't have people. You didn't have B's being asked for before you had A's being asked for in the A list.

Mr. SHAPIRO. With very few exceptions.

Senator BIDEN. Very few exceptions.

Now, can you tell us how many requests other than those 480 occurred for previous reports that came in the time period of Mr. Marceca from August 18 until March when he left? Can you tell us how many additional requests came that don't fall within that 481 alphabetical list that you have?

Mr. SHAPIRO. Let me tell you what I can tell you, and what I can't tell you, we can have someone go through the computer records and add up.

Senator BIDEN. That would be useful.

Mr. SHAPIRO. From January 1994 forward, and if my math is right, as I am doing it, approximately 330 of these came in from January or at least went out.

Senator BIDEN. What do you mean by "these"? The alphabetical list?

Mr. SHAPIRO. Out of the 480—

Senator BIDEN. Yes.

Mr. SHAPIRO [continuing]. Three-hundred and thirty, give or take a couple, were responded to after January 1994.

Senator BIDEN. Got you.

Mr. SHAPIRO. The total for 1994 was 382.

Senator BIDEN. So there were only—

Mr. SHAPIRO. Fifty-two, give or take a few, again—

Senator BIDEN [continuing]. Fifty-two additional—

Mr. SHAPIRO [continuing]. During the course of—

Senator BIDEN [continuing]. From January on—

Mr. SHAPIRO [continuing]. Nineteen ninety four.

Senator BIDEN [continuing]. Of 1994.

Mr. SHAPIRO. On this particular type of request.

Senator BIDEN. Yes, that is what we are talking about. The only thing anybody is worried about here are previous reports because that is the only place where there could be a violation of anything. If you are asking for a current report, if I am President and I say to my chief of staff, Cynthia Hogan, "Cynthia, I want to hire Shapiro. I want to make him director of the FBI," she is going to start the process that requires you to have to go through, even though you are in the FBI, an FBI clearance. No one is worried about those requests.

Mr. SHAPIRO. And would require my consent.

Senator BIDEN. And it would require your consent and everything else.

The only thing we are focussing on where everybody is crying foul, and it seems with some good reason, is when there is a previous report being requested.

So, in 1994, 380, roughly, requests for a copy of a previous report were made.

Mr. SHAPIRO. That is an accurate number; 382 requests were, I should say, responded to in 1994.

Senator BIDEN. Responded to.

Mr. SHAPIRO. Some of those may come in at the end of 1993.

Senator BIDEN. Got you. They were responded to in 1994.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. Of those 382, how many were in Mr. Marceca's alphabetical list?

Mr. SHAPIRO. I will get you the precise numbers, but it is roughly between 300 and 330.

Senator BIDEN. So we are talking about somewhere between 50 and 80 additional previous report requests beyond this list.

Who took my list? Did I take my list? I feel like Mr. Roberts. Who stole the strawberries? I have the list. Anyway, I had it here. I don't know what I did with the list, the list that you supplied us.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. Now, the reason I bother to ask that is those additional 50 to 80 requests that don't appear in the alphabetical list,

somewhere between 50 and 80 of those listed didn't appear in the alphabetical list that you gave me for previous reports. Did they have any sequence or rhyme or reason to them you could identify? Were they just sporadic? They were just across the board? Did they fall beyond the alphabet? Do you know what I am trying to get?

Mr. SHAPIRO. I understand the question. I am not sure we fully analyzed all of the data outside this period to be able to answer that.

Senator BIDEN. To the extent that you can—I don't think that it is inconsistent with your being asked not to investigate it—to do that for me.

Mr. SHAPIRO. No, I don't believe so.

Senator BIDEN. Would you be willing to do that?

Mr. SHAPIRO. Yes, I certainly will.

Senator BIDEN. OK. Now, I thank the chair for letting me go on here.

One of the things that seems to me to be pretty important, Senator Abraham asked you about basically making the point that all this stopped—not all of this. This ad seriatim list alphabetically stopped at Go when Marceca w-e-n-t. When he left, he stopped. Go was the last time, and the implication is, by all of us when we say it, that the new person, Lisa—

Mr. SHAPIRO. Wetzl.

Senator BIDEN [continuing]. Wetzl smelled a rat and said something is wrong here, we shouldn't do this anymore.

My staff tells me that it is more likely that or it is least as likely that the project stopped, project meaning finding out how many holdovers there were, when the detailee left in March, and she didn't get around to picking it up again until the late fall.

When she went back in the late fall to continue to go this route, she looked down and said, wow, wait a minute, we don't need all of this. Do you have a reason to believe one explanation or another is more logical or rational or likely?

Mr. SHAPIRO. Well, the only thing I know inconsistent with the alternative scenario you have painted is that this series of requests stopped January 31, 1994.

Senator BIDEN. I see. That is even before he left.

Mr. SHAPIRO. Right.

Senator BIDEN. He didn't leave until March.

Mr. SHAPIRO. Well, you have told me that. I don't have that information independently.

Senator BIDEN. Are we certain when he left?

I am told by staff he left in March.

Mr. SHAPIRO. If that is correct, this stopped before he departed.

Senator BIDEN. It stopped even before he departed. I see. OK. That is worth knowing.

Mr. SHAPIRO. I had been operating under the assumption based on perhaps nothing at all that that is when his detail had ended, January 31, 1994, but again, we have not interviewed him, and I don't know.

Senator BIDEN. Got you. OK.

One of the problems we have had here, and I am not criticizing anyone in particular, but my staff—

Mr. SHAPIRO. I am sorry. Excuse me a second, Senator, if I may. The declaration of Anthony Marceca, which was released publicly by the White House, says he remained in the Office of Personnel Security until mid-February 1994.

Senator BIDEN. Mid-February.

Mr. SHAPIRO. It is no more precise than that.

Senator BIDEN. Got you.

The last request, you assume, from him is?

Mr. SHAPIRO. January 31.

Senator BIDEN. January 31. So it would kind of coincide to him, at least theoretically, with him winding down and getting out of there. He just stopped.

Mr. SHAPIRO. That had been my assumption. Yes, sir.

Senator BIDEN. Now, it would be useful to know for me, I think—I am not sure it is useful anymore, but I think it might be useful to know how many previous report requests came in between February or January 31 and the time that Ms. Wetzl says she said boxed up these 331, we shouldn't have these, anyway, and send them to the archives, which is according to her sometime in the fall.

So can you get for me how many requests came in for previous reports, and I think you told me this already, between February 1 and November 1?

Mr. SHAPIRO. I could actually give that to you right now.

Senator BIDEN. Good. That would be helpful.

Mr. SHAPIRO. It would require a little math, but I am happy to do that if you bear with me for one moment.

Senator BIDEN. Sure. I must tell you, Mr. Shapiro, I am a kind of nut on this privacy piece, as you know and your boss knows and everybody in this town who I have worked with in Judiciary Committee knows, and I admit I am a little overboard. I air excessively on the side for privacy. I acknowledge that, front end.

I could not understand, and I still don't fully understand, why the White House, any White House, needs to have any file on anybody kept in the White House. That has been the practice for years and years and years. I can't understand, even if it is a summary, why that is necessary.

You all, in effect, work for me if I am President. You are the executive branch. I don't know why the hell we just don't have you keep the file, why any file has to be kept.

The explanation given to me by some is that it goes back to the days when you don't trust the White House and the White House doesn't trust you because they want to have a file. All White Houses have want to have had a file. So, if anything ever comes up on the person for whom they hired, if they ended up having been a security risk, they will be able to say, well, look, this is what the FBI told us, and they are worried if you have the file and something comes up, you all may go back in, change it, to say no, we told them it was a security risk, and when you didn't.

I mean, it is a hell of a comment on American Government, but otherwise, there is no real explanation why there is a need for anybody in the White House to keep—other than a check—to keep a file on somebody, it seems to me.

Now, that sheds no light on anything, I acknowledge, but I think the average American out there is sitting and saying, wait a minute, you got the FBI there, why did Bush or Clinton or Carter or Regan have to have a summary of an FBI file on 10,000 people? My estimate is the same you gave, sir, that Bush had a room that had 10,000 FBI files in it, of 10,000 people. This outfit has a room over there that has the list of 10,000 names, roughly, with a name attached to it.

I mean, that seems to me to be a totally unnecessary risk of people's privacy when they are already in your file.

I mean, when you send the file over, the summary—

Mr. SHAPIRO. Summaries.

Senator BIDEN [continuing]. Do you keep a summary copy in your file?

Mr. SHAPIRO. Oh, yes, sir.

Senator BIDEN. Right. So now we have got two copies. We have got a full file on John Doe at the FBI headquarters, and we have a summary of John Doe's file at the FBI headquarters, and we have a summary of the FBI file in the White House with somebody who is extremely competent looking over it or somebody who is incompetent looking over it, but there is that file sitting there. For the life of me, I can't fully understand why there is a need to have it over there as well, other than the explanation given to me, which is historically White Houses don't trust FBI's and FBI's don't trust White Houses, notwithstanding the fact that you all work together.

I personally appreciate your effort to try to help us unravel it. I understand and accept your inability, Mr. Shapiro, to tell us more because, if you did start to investigate, immediately there would be the criticism how can the FBI investigate an incident or an issue that they have already criticized as saying they are partially responsible for it and, therefore, whatever you came up with would be subject to question as to whether or not it was a whitewash or accurate or not.

I understand less, but understand the Secret Service not having any idea what list was being used and how the list could be complied, although I am still confused as to how no one could know what list, whether it is out of the ether these names were being picked.

I will stop there, Mr. Chairman, and I thank you both for your cooperation with it.

Senator DEWINE. Mr. Miller, Mr. Shapiro, the good news is we are about there. The bad news is we are not quite there. I have a couple of additional questions.

Mr. Shapiro, when a new administration comes in, they obviously, as you said, have to make some decisions about holdover employees. There are going to be some people who are going to stay. That new administration then, many times, asks for previous reports. They get the previous reports, correct?

Mr. SHAPIRO. That is my understanding.

Senator DEWINE. It is an unusual procedure.

In this case, though, the Clinton White House had a very, very dramatic increase in the number of these previous report requests, 480 of them.

Senator BIDEN. Excuse me, Senator. Excuse me. Do we know that it was a very dramatic increase? I am not questioning you. It was, but do we know that?

Mr. SHAPIRO. What I can say about that is that the people in the unit perceive that to be an unusually large clump to come in.

We do know there is a dramatic increase in the number of overall requests which—

Senator BIDEN. Overall requests for previous reports?

Mr. SHAPIRO. No.

Senator BIDEN. No.

Mr. SHAPIRO. I was about to say it would subsume previous reports, would go well beyond that.

Senator DEWINE. In fact, in your report, you cite anecdotally what they saw. Then you come with your next paragraph which says an analysis of the computer records confirms the recollections of the analyst regarding influx of requests.

Mr. SHAPIRO. Since 1990, which is as far back as the computer records go.

Senator DEWINE. OK, but your next sentence says between December 6, 1993, and February 3, 1994, amid all of the other requests flowing in from the White House, EASU received no fewer than 481 requests which bear the characteristics of a single series. Correct?

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. Excuse me, Senator. This is really important because I think your point is an important one.

You only have records that go back to 1990.

Mr. SHAPIRO. Yes, sir.

Senator BIDEN. The last time the outfit changed was 1988, not 1990.

Mr. SHAPIRO. The last time it changed in the same manner was 1980.

Senator BIDEN. Yes. So you don't know, and I am not questioning the recollection of your folks.

Mr. SHAPIRO. I don't have the numbers.

Senator BIDEN. They don't now. They don't have the numbers. One of the things you might ask, or somebody, I hope, will ask them, when they say significant, do they mean we have 438 here last time, I only remember getting 10 or 12, or do they mean we got 300 last time, it was around 300, and now we get 481? I mean, it makes a difference.

Senator DEWINE. This series of requests, the alphabetical order request, 480, 481, occurs 11 months into the administration.

Mr. SHAPIRO. It begins 11 months.

Senator DEWINE. It begins 11 months into the administration; in fact, a little more than 11 months; December 6, 1993, 11 months.

You would assume at that point that most of the holdover decisions had already been made.

Mr. SHAPIRO. I would just say to that, Senator, that that is a fair assumption. It is not my assumption—and I haven't worked in the Office of Personnel Security, and I haven't been permitted to interview anybody there. So this is somewhat uninformed. It is not my assumption that these records would be sought just for the purpose of making the decision on a holdover. The record might be sought

in order, Senator Biden's views notwithstanding, to have a file at the White House of the people who were holdovers.

Senator DEWINE. Right.

Mr. SHAPIRO. Do you understand the distinction I am trying to draw? The decision may have been made long before.

Senator DEWINE. I understand. I understand what you are saying.

Mr. SHAPIRO. They may have just been subsequently going through and policing their files.

Senator DEWINE. Even though checked on there is "Access."

Mr. SHAPIRO. Yes, sir.

Senator DEWINE. That is what it says, "Access."

Mr. SHAPIRO. That is right.

Senator DEWINE. You concluded, did you not, after this review that there was no official purpose for the White House to make these requests? That is what you say on the next page.

Mr. SHAPIRO. I absolutely concluded that. I should say, I concluded that, in large part, on the White House's admission that these files needed to be returned to us because they weren't people for who they had a purpose to request the files.

Senator DEWINE. You describe them as facially valid, where without justification serve no official purpose.

Mr. SHAPIRO. Yes, sir.

Senator DEWINE. Anything else, Senator?

Senator BIDEN. Would you have known that had they not told you?

Mr. SHAPIRO. Not without sort of doing an exhaustive, painstaking going to each person and finding out when they left the White House.

Senator BIDEN. No, but my point is this. You got a phone call at some point saying I got 300-and-some files over here.

Mr. SHAPIRO. That is absolutely right.

Senator BIDEN. Had you not gotten that phone call—now, you could also point out, had Clinger not asked for the information, you might not have gotten the phone call.

Mr. SHAPIRO. I get the impression that might have been pointed out.

Senator BIDEN. Your independent ability to make the determination you made rested on the fact that at some point, for whatever reason, whatever motivation, you got a call saying, by the way, I got 361 files over here I don't think we should have had.

Mr. SHAPIRO. That is correct, and just so I can be entirely clear on this, from information in the possession of the FBI which is to say, aside from our going to the White House and ourselves pouring over their microfilm or going to the individuals and interviewing, there was no way to determine when someone's time at the White House begins and ends—

Senator BIDEN. Right.

Mr. SHAPIRO [continuing]. Or, and we can't determine that, even less if you can be even less than zero, we—there are—

Senator BIDEN. Around here you can.

Mr. SHAPIRO. There are, of course, other reasons for which one might seek access other than employee.

Senator BIDEN. Right.

Mr. SHAPIRO. And we certainly don't have that kind of information.

Senator BIDEN. Mr. Chairman, one other point.

When Senator Abraham or someone asked, well, couldn't you just go to the employment records and find out who is employed in the White House to know whether they should have a pass or not, an awful lot of people have passes that don't work for the White House and don't get paid through the White House. All of the folks at the State Department don't have passes—not all of them. A lot of them do. The Secretary of State doesn't get paid through the White House, right?

Mr. MILLER. That is true.

Senator BIDEN. He is not a White House employee.

The people on my staff when they get a name clearance to go down there, they don't get paid by the White House. People who work at the Department of Agriculture go over there. They don't work for the White House.

So the truth is, even if you have the White House payroll and then you took all active passes, it wouldn't match up. There would be a lot of people. Those who are on the payroll would be on the list, but there would be a lot of other people on that list of active pass-holders who weren't White House employees, right?

Mr. MILLER. That is correct. Somebody like GSA.

Senator BIDEN. Yes.

I think it is important, and I want to thank my Republican colleagues, notwithstanding how the opening statements went, for the fairness with which this is moving because I think one thing that is apparent to me is that without drawing any conclusions about whether the White House did something, whether they were malevolent or whether they were malfeasant or nonfeasant, without drawing that conclusion at this point, it is a pretty complicated process for us to even understand it as to how these lists are, who is on what list, why people ask for it, why you would want to have a file and so on, at least for me it is.

I have been around here a while and thought I understood the process, but then again, I didn't get past Iowa. So there is no reason for me to have understood how the White House works.

Anyway, thanks.

Senator DEWINE. Mr. Miller, Mr. Shapiro, thank you very much. We would like to thank all of the witnesses who testified today.

It is the chairman's intention to hold additional hearings. It is also the chairman's intention to bring in Mr. Livingstone and Mr. Marceca and other witnesses.

Mr. SHAPIRO. Thank you.

Mr. MILLER. Thank you.

Senator BIDEN. Thank you, gentleman.

Senator DEWINE. That concludes today's hearing.

[Whereupon, at 4:48 p.m., the committee was adjourned.]

WHITE HOUSE ACCESS TO FBI SUMMARIES

FRIDAY, JUNE 28, 1996

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The committee met, pursuant to notice, at 9:23 a.m., in room SH-216, Hart Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Simpson, Grassley, Specter, Brown, Thompson, Kyl, DeWine, Abraham, Biden, Leahy, Heflin, Simon, and Feinstein.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

THE CHAIRMAN. Today, the Senate Judiciary Committee will hold a second hearing to examine some of the facts surrounding the recent disclosures that the White House had improperly acquired various FBI file summaries of as—can we get this working—of as many as 700 individuals, most of whom had worked at the White House under Republican administrations and who no longer had access to the White House.

Whether this was an incident of gross incompetence or something more corrupt remains to be seen. We should not rush to judgment. Instead, we must go where the facts lead us.

Can we theorize about where the list the White House used may have come from? Certainly. We have heard plenty of theories. But let's stick to the facts.

Furthermore, what list was used and where it may have come from is not the issue here. The issue for this committee to determine is whether the wrongful acquisition by the White House of files belonging to loyal public servants like James Baker, Ken Duberstein, and Brent Scowcroft was an act of negligence or something more nefarious. We need to determine why the White House kept this incident hidden for so long. After all, we are talking about the most private details about men and women who served their country. The questions we need to focus the inquiry on are, among others:

How many FBI files were improperly acquired by the Clinton White House? The number of people whose privacy was violated continues to rise almost on a daily basis.

Why did the President allow political operatives to conduct this most sensitive work?

Who hired—what's the matter with the mike? Who hired Mr. Livingstone? As today's Washington Post notes in its lead editorial:

Of all the outstanding questions, the hardest to get an answer to has been how Mr. Livingstone was put on the job and by whom? * * * At this stage, nobody at the White House will claim credit for Craig Livingstone. It gets you wondering.

Why were these background files requested?

Why were the private files of former White House employees reviewed once they were received?

What did the White House do with the information contained in these files?

Did anyone use—did anyone—I guess I will just get closer. Did anyone use FBI files for their own benefit?

Could White House employees have e-mailed information obtained from files to other computers in the White House? If so, was it ever done?

Who had access to the files during the year they were kept in the security office? Who had access to them while they were kept in Records Management?

Why did the White House take a sudden interest in resuming the work on project update in the fall of 1994 at the same time the General Accounting Office began a review of the security office?

Why did the White House fail to return these files when the so-called error was discovered in the fall of 1994?

Why did the White House destroy the list and FBI request forms found in the vault?

Why did the—why did the—

Senator SIMON. Why don't you just skip to another mike?

The CHAIRMAN. Yes, let me get a better mike here. I am not doing too well here.

Senator Simpson said there is a screw loose in the speaker.
[Laughter.]

Senator SIMPSON. Well, I didn't mean—

The CHAIRMAN. I thought that was quite quaint.

OK. Why did the White House fail to return these files when the so-called error was discovered in the fall of 1994?

Why did the White House destroy the list and FBI request forms found in the vault?

Why did the White House ship these files off to the Records Management Office rather than return them to the FBI or alert the Department of Justice?

Why did the White House, upon learning of its problems in the security office, fail to take action to remedy the problems even after the Senate Intelligence Committee advised them to do so?

Why did the White House hide its acquisition of the FBI file on Billy Dale from the House Government Reform and Oversight Committee and, eventually, for the House to threaten the White House with contempt?

Why did the White House withhold the existence of these files until the FBI came asking only a few short weeks ago?

Why has the White House failed to investigate this matter and provide Congress with answers to basic questions?

These are just some of the unanswered questions which this committee must endeavor to resolve. For as many as 700 men and women, the most personal and private matters were in the possession of at least two long-time Democratic operatives who, using White House resources, simply asked for them. The FBI gave them

what they asked for, no questions asked. Quite simply, this was a flagrant abuse of power and trust. To quote the Post again, "The FBI files affair raises serious questions. They deserve and require serious answers and real ones."

This is an issue that transcends political party. Accordingly, I expect this committee to continue to work in a bipartisan manner and press forward rather than demonize certain individuals or cloud the issues. I know that all of my colleagues agree that unless this Congress acts to restore public trust in the FBI, the White House, and in our ability to maintain the integrity of Government-held background files, our national security and privacy protections risk permanent damage.

Now, I have been notified by Mr. Marceca's counsel, Mr. Robert Muse, that Mr. Marceca is invoking his fifth amendment privilege against self-incrimination and is refusing to appear before this committee today. I will read the letter of counsel.

"Dear Senators Hatch and Biden"—it is dated today, June 28, 1996.

Dear Senators Hatch and Biden: Yesterday, we notified your staff that Anthony B. Marceca would be in attendance at today's hearing before the Senate Judiciary Committee. Mr. Marceca has authorized us to notify you that, on the advice of counsel, he will assert his right to remain silent under the Fifth Amendment, in response to any questions he may be asked by the Committee.

Inasmuch as Mr. Marceca will be asserting his constitutional right not to answer the Committee's questions, we request that he be permitted to do so by this letter. To call him before the Committee, particularly given the public nature of the proceedings, will cause him only needless embarrassment. We are aware of numerous instances where Senate committees have allowed witnesses to proceed in the manner we propose. We respectfully ask that the Judiciary Committee follow these precedents and excuse Mr. Marceca from appearing at today's hearing.

We appreciate your consideration of this matter.

Sincerely, Robert F. Muse and Robert M. Weinberg.

Mr. Muse and Mr. Weinberg, is this your present position as you represent Mr. Marceca?

Mr. MUSE. It is.

The CHAIRMAN. So you will invoke the fifth amendment privilege as to any and all questions that this committee might ask on his behalf?

Mr. MUSE. On his behalf.

The CHAIRMAN. Thank you very much, sir.

Let me just say this: Counsel for Mr. Marceca informs me, has informed all of us, that Mr. Marceca will refuse to answer any and all questions on all topics related to today's hearing. Counsel for the committee will work with Mr. Marceca's counsel to identify if there are any areas about which Mr. Marceca will testify. The committee will take this letter under advisement, and we reserve the right to consider whether the invocation of the fifth amendment is well founded, because Mr. Marceca has given statements and has been deposed by the House. But as of today, we are certainly going to recognize your right to have your counsel refuse to testify here today. You are excused.

Mr. MUSE. Thank you.

The CHAIRMAN. We had planned on calling Mr. Marceca along with D. Craig Livingstone and Lisa Wetzl, so we will call—since Mr. Marceca will not appear, we will call D. Craig Livingstone at this time, former Director of the White House Office of Personnel

Security, and Lisa Wetzl, the former staffer of the White House Office of Personnel Security, to the witness chairs, if we can have them at this time.

Could you both stand and take the oath? Do you solemnly swear to tell the whole truth and nothing but the truth, so help you God?

Mr. LIVINGSTONE. I do.

Ms. WETZL. I do.

The CHAIRMAN. Do either of you have statements you would care to make to the committee? Mr. Livingstone, we will turn to you first, and then we will turn to you, Ms. Wetzl.

PANEL CONSISTING OF D. CRAIG LIVINGSTONE, FORMER DIRECTOR, WHITE HOUSE OFFICE OF PERSONNEL SECURITY; AND LISA WETZL, FORMER STAFFER, WHITE HOUSE OFFICE OF PERSONNEL SECURITY

TESTIMONY OF D. CRAIG LIVINGSTONE

Mr. LIVINGSTONE. Yes, Senator, I do. Thank you.

The CHAIRMAN. Could you pull your mike up?

Mr. LIVINGSTONE. I would be happy to, sir.

The CHAIRMAN. Apparently we are having troubles here this morning.

Mr. LIVINGSTONE. I am sorry. Can you hear me now?

The CHAIRMAN. Yes.

Mr. LIVINGSTONE. Chairman Hatch, Senator Biden, and members of the committee, thank you for inviting me to testify here today.

Last Wednesday, I appeared before the House Government Reform and Oversight Committee, where I made an opening statement that described my understanding and my feelings about this matter. I do not intend to repeat that entire statement here today, but I would like to reiterate a few key points.

First, to each person whose FBI background summary was mistakenly obtained by the Office of Personnel Security while I was its Director, I want to say again that I am deeply sorry for this mistake and that it occurred. I hope that my testimony—along with the testimony of Anthony Marceca, Lisa Wetzl, and the others who testified before the House committee, as well as those who will testify before this committee today—will allay your fears that any background files were ever obtained or used by the Clinton White House for any improper purpose.

Second, I want to be absolutely clear, once again, that I was never asked to obtain, I never instructed anyone else to obtain, and I never myself sought to obtain any FBI background information on any person for any improper purpose whatsoever, nor do I believe that anyone working for me ever sought to do so. I did my best to treat background information confidentially. I never disclosed, nor asked anyone else to disclose, any information contained in anyone else's FBI background files to any other person for any improper purpose whatsoever, and I have no reason to believe that anyone else in my office ever did so.

To the very best of my knowledge and belief, my office's request for previous FBI summary reports on several hundred former administration staffers was an entirely innocent mistake that occurred during the routine process of creating personnel security

files on everyone who had access to the White House complex. As best as I can tell, this mistake occurred because the passholder list provided to my office by the Secret Service and used for the update project contained names of former staffers who no longer had access to the White House complex, interspersed among the names of actual current passholders and others who continued to have access. As a result, it appears that Mr. Marceca, who relied on that Secret Service list in good faith, inadvertently requested previous reports on a number of individuals who, in reality, no longer had access to the White House complex.

As I said Wednesday, I know, and I accept, that I bear responsibility for the mistake that occurred. That is why I resigned. I bear responsibility because I failed to coordinate closely enough with Nancy Gemmell, who had worked in both the Reagan and Bush administrations and who began the project, and because I failed to supervise closely enough Mr. Marceca, who picked up the project and worked on it for approximately 6 months, and Ms. Wetzl, who completed the project. Because my attention was focused elsewhere on what I believed at the time to be more pressing priorities, I did not recognize the problem, and for that I am truly sorry.

But I also want to reiterate that neither I nor, to my knowledge, anyone else in the White House participated in any kind of smear campaign or an effort to compile an enemies list, as some have alleged or feared. It is not true. There was never any attempt by anyone in the Clinton White House to improperly obtain or misuse the FBI files on any American—Democrat or Republican.

Senator, I appreciate you for giving me the opportunity to make this opening statement.

The CHAIRMAN. Thank you, Mr. Livingstone.

Ms. Wetzl.

TESTIMONY OF LISA WETZL

Ms. WETZL. Good morning, Mr. Chairman and members of the committee. My name is Lisa Wetzl. I was employed at the White House Office of Personnel Security beginning in June 1993 as a White House intern. In August 1993, I became a staff assistant at the Office of Personnel Security and was promoted to executive assistant in the fall of 1994. I left that office in September 1995 and presently work for the Department of the Army.

All of the staff in the Office of Personnel Security while I was there was located in one room in the Old Executive Office Building. Off of that room was a locked door that led into a vault that the Office of Personnel Security shared with the Office of Records Management. Others who worked in the Office of Personnel Security at the time that I began to work there were Craig Livingstone, Mari Anderson, and Nancy Gemmell.

At the start of my time in the Office of Personnel Security, most of our work was focused on the paperwork for full-field investigations of new White House employees. This process began with the Secret Service performing an NCIC check, which usually took less than one day. After that check, an employee would be put on a 24-hour access list to the complex. Office of Personnel Security staff would then request an FBI name check, which was initiated by sending over a preprinted memo to the FBI liaison. The name

check took approximately 2 weeks. When the name check was favorably returned, the individual was issued a temporary hard pass to the complex.

When the name check was complete, Office of Personnel Security sent the same preprinted memorandum to FBI liaison with a request for a full-field investigation. Attached to this form was a standard form 85, which had to be completed by the employee. Much of my initial work in the office involved making sure that these forms were filled out correctly. Once the completed forms were sent to the FBI, the results of the full-field investigation were sent to an associate White House counsel.

Another project that was being undertaken was the reconstruction of security files for the many holdover employees, detailees, agency representatives, et cetera, who had access to the White House complex. These included permanent White House employees and those detailed to the White House from agencies. I was informed that this project was necessary because at the end of every administration, all of the security files of people with access to the White House complex are boxed up and sent to the National Archives with Presidential papers. Therefore, there were no files on holdover employees and there was no way to tell when those employees needed to have the routine update of the FBI background investigation that I understood was required every 5 years. This undertaking was known as the Update Project.

I became aware of the need to do the update project from Nancy Gemmell. Nancy was the only career employee left in the office at the time, since all of the others had retired either at the end of the Bush administration or a few months thereafter. She was our primary source of information on procedures. Prior to her retirement in August 1993, I was at a meeting with Nancy and Mari Anderson in which Nancy gave us as much information as she could about what's needed to be done and how it should be done. I do not remember exactly what she said about the update project, but I came away with a general understanding of the goals of the project. I also knew that she had started on the update project and that she had left the materials she had been using in the vault.

Nancy retired at about the same time that Tony Marceca's detail began. I did not supervise or work on projects with Tony, but because we were all in one room I had a general understanding of what he was doing. I understood that at the start of his detail he was, like the rest of us in the office, primarily working on the paperwork for FBI full-field background investigations of new employees. At some point after he started, I understood that he began to work on the update project.

I do not know the details of how Tony was doing the update project. I did not examine the list he was working from. I could see, however, that he was using a Secret Service list because of the distinctive green and white computer paper on which those lists are printed. In addition, while I knew these lists were not entirely accurate, they were the only source of information the Office of Personnel Security could work from in trying to determine the names of all the holdover employees.

Tony left our office in February of 1994. For many months, no substantive work was done on the update project. I knew that Tony

had left some files he had accumulated in the vault, but I did not look at them—nor was I aware of anyone else looking at them—until I began to work on the project in the late fall of 1994.

When I first picked up the project, I looked at the materials that both Nancy and Tony had gathered in their work on the update project. Nancy's materials were in the vault, and they consisted of a Secret Service list and hundreds of completed 1-page FBI request forms with Bernard Nussbaum's name on them. These forms were stacked in alphabetical order. When I looked at the Secret Service list she had left, I knew immediately that it was out of date. It was extremely long and appeared to contain hundreds of names from past administrations. These names were listed in alphabetical order. I do not recall that it had any indication of whether an employee was active or inactive. Although I could not be certain, it looked to me as though Nancy had attempted to complete an FBI request form for each name on the Secret Service list. I determined that these forms and the list had so many out-of-date names that they would be more work to sort through than to start over from scratch. Therefore, I disposed of this list and the forms in the burn bag that was collected by the Secret Service each day.

In looking at the files Tony had accumulated, I was struck immediately by the sheer number of files. I noted that they were in alphabetical order from A to G, and the files seemed to vastly outnumber the active White House staff whose names would fall in that range. In looking at the labels on the files, I noticed many names that I did not recognize. The first name that jumped out at me was Marlin Fitzwater. I immediately concluded that Tony must have ordered previous reports for every person on whatever out-of-date Secret Service list he had been working from.

As I reviewed the names on the labels, I also determined that Tony had accumulated many of the files that I did need. I was exasperated that I would now have to sort through a lot of useless files in order to pull out the ones I needed. At no time was I alarmed by what Tony had done. I thought he had simply made a mistake that I was going to have to clean up.

The files Tony had left were color-coded with orange labels, which indicated White House staff. I do not recall seeing a Secret Service list in or around these files. However, in the course of assuming the update project, I learned that files for several other categories of holdover employees had already been requested, I presume by either Nancy or Tony. These files had already been incorporated into our working files of active passholders and, therefore, were not grouped together in separate bins.

THE CHAIRMAN. Ms. Wetzl, how many more pages do you have there?

Ms. WETZL. One.

THE CHAIRMAN. Well, if you can finish—the only reason I am asking you is because we have a vote, and we only have a few minutes to get there. But let's have you finish, and we will try and tell them to wait. Then we will recess until we can get back.

Ms. WETZL. I will try to speed it up.

THE CHAIRMAN. No, no. You are doing fine. I just wanted to know because if it was longer, then we would have to recess.

Ms. WETZL. OK. Over the next several months, I culled through the files Tony had left. By September 1995, when I left the Office of Personnel Security, I believe the update project was complete. My technique for sorting through Tony's files and for determining what additional previous reports I should order from the FBI was to start with a Secret Service list. The list I used was provided to us by the Secret Service on a monthly basis, but we could ask for updated copies more frequently. I understood that this was the Secret Service's list of active passholders.

It was well known around our office that the Secret Service lists included names of people who no longer had active passes. I would check out each name on the list before ordering a previous report from the FBI by calling the office in the White House where that person supposedly worked. I also asked the supervisors of various offices to write me a list of the holdover employees who worked in those offices. In this fashion, I was able to develop my own list of those who were truly holdover employees.

On many occasions, I would inform the women who worked in the Secret Service office who had provided us with the lists that their lists contained names that should no longer be there or that persons were listed as working in the wrong office. As time passed, these lists became more up to date.

After determining which of Tony's files I did not need, I put them in boxes to send to the Office of Records Management. Consistent with standard practice, I typed an inventory sheet containing the names on the labels of these files. I sent this inventory sheet with the boxes to Records Management.

In the course of finishing the update project, I occasionally discovered that I had sent to Records Management a file for someone who was, in fact, an active employee, detailee, et cetera. I requested and received these files back from Records Management. I put these files with all of the other files of Office of Personnel Security on active White House employees in the vault.

During the time that I worked on the update project, I reviewed the contents only of files of employees whose active status I had confirmed. I was not reviewing the files for content, but to determine the date of their last background investigation. At no time did anyone ask me to provide them with a file of any past administration official, and I have no knowledge of anyone in the Clinton administration using these files for any improper purpose.

Thank you.

The CHAIRMAN. Well, I thank both of you.

We have a vote, so we are going to have to recess until we can get back, and we appreciate having the testimony of both of you. So we will just take a short recess. We will go vote, and we will be right back.

[Recess.]

The CHAIRMAN. Senator Biden, would you care to make your opening statement?

Senator BIDEN. I will be brief, Mr. Chairman. I would ask unanimous consent that my entire opening statement be placed in the record.

The CHAIRMAN. Without objection.

**STATEMENT OF HON. JOSEPH R. BIDEN, JR., A U.S. SENATOR
FROM THE STATE OF DELAWARE**

Senator BIDEN. Let me very briefly suggest, though—what I understand you have already said—that this is about determining the facts and details of what is a confusing situation, at best. And until now the issue has been this whole idea of why the Clinton White House obtained confidential summaries of FBI reports on former Bush and Reagan administration officials. It has up to now been the subject of a lot of speculation and accusation, and it seems the facts are starting to work their way out here.

We have several panels today, and I think to your credit and everyone else's, we have moved beyond the outrage over what has occurred and to figure out why it occurred. Eighteen people have been interviewed by our staffs. Numerous agencies have provided information, and thousands of pages of documents have been collected. And taken as a whole, the evidence the committee has gathered suggests that a number of factors contributed to the improper request for information.

First, there was a very inexperienced staff at the White House Office of Personnel Security who received little, if any, formal training. By March of 1993, only one experienced holdover employee, Nancy Gemmell, remained in the office, and she retired in August of 1993. And as I indicated to you earlier, I think it would be very appropriate to hear from Ms. Gemmell now to understand the continuity. Ms. Gemmell started this project. Mr. Livingstone came in when Ms. Gemmell was there. Ms. Wetzl came in after Mr. Marceca left and before—and so on. So it seems to me that we should not have her on the other panel, but I know you are insisting she stay in the other panel. I don't understand that, but you are the chairman.

It is important to note, however, that before Ms. Gemmell retired, she was the employee who initiated project update in which the office requested copies of previous reports, the technical term, on holdover employees from the White House. She began the project because she had worked on similar projects during the transition from previous Republican administrations.

Her first step was to request a special report from the Secret Service listing active passholders, that is, those persons who currently worked in the White House complex, and containing certain biographical information needed to undertake the project. After receiving the list from the Secret Service, she divided the list and instructed the Office of Personnel Security staff to proceed department by department within the White House. One of the things that is confusing when you read this in the press—and it was confusing to me—there is not just one list. There is a giant list, but then there are a number of departments. There is the Office of the President. There is an office called AT&T. I asked my staff, what the heck is AT&T? Well, it is AT&T, American Telephone and Telegraph. Permanent people who work for AT&T, who get paid by AT&T, but are in the White House permanently, maintaining those phones. So they apparently broke out all these lists.

Would you put up the pass system for me, staff?

One of the things that I had great difficulty doing, Mr. Chairman, is understanding how this crazy-quilt place was organized,

and I will just take a second and explain something that you may all know, but I didn't know, I didn't understand.

Put in the Secret Service data base. Secret Service has a data base, two separate data bases. One is called the E-pass system and the other is called WAVES [Workers and Visitors Entrance System].

Now, the E-pass system contains the names of approximately 6,000 active and 18,000 inactive passholders, including all passholders over the last 8 years. Its purpose is to maintain security at the White House by controlling who can get a hard pass. That is a pass that allows them daily access to the White House complex. And it should automatically communicate—this E-pass data base system should automatically communicate with the separate data base system that the Secret Service has called WAVES when a person moves from active to inactive status.

Now, what is WAVES? WAVES receives information from the E-pass data base system, is used to provide printed lists of names of passholders when Ms. Wetzl or anybody else asks for a list. It maintains administrative functions such as allowing hard passholders to invite visitors to the White House for appointments. And it should automatically delete a passholder's name when they become inactive on the E-pass system.

Now, put up this last chart. I won't go through them all because this may—put up the chart how E-pass and the WAVES systems work practically. I said to my staff, now tell me, just practically, how does this work? Give me an example. They said, OK, Mike McCurry's name is listed on the E-pass system, enabling him to obtain a hard pass. That is literally a pass they wear around their neck that allows them daily access to the White House complex. Then because McCurry is listed as active on the E-pass system, his name automatically gets put on this other data base called WAVES.

Now, because McCurry's name—he is active now. But the inactive person on E-pass is not supposed to go to WAVES. So active hard passholder, that name also appears on WAVES. Well, why have WAVES? I said, Why do they have two systems? What is the purpose of that?

Well, because McCurry is listed on the WAVES system, he can make an appointment with my press secretary in the U.S. Senate and invite my press secretary down to the White House to meet with him in the White House. Then the press secretary, my press secretary, goes to the White House gate, and the Secret Service checks the system, WAVES system, to find out whether McCurry, who had a hard pass, said let this guy in—Spinelli, the guy who works for me. The WAVES system confirms that Spinelli has an appointment, and once confirmed, he is admitted to the White House.

That is why there are these two systems, and I hope to show, based on what I have been led to understand, why there is so much confusion as a consequence of these two systems, based on what I have learned so far, apparently not always working in sync and not always being accurate.

That is the extent—I have a much longer opening statement, but since I wasn't here to open, I will not give it, and I thank the

Chair. But I would like everyone to keep in mind as we go through these questions how these systems work. And if the systems are out of sync and you have the wrong names on the wrong system and somebody asks in the White House for a list, you are not going to get an accurate list if that gets messed up.

Now, it remains to be seen whether those systems were not functioning properly. That is one of the purposes I have in this hearing: to find out how they worked and who got what list where and how.

I thank you, Mr. Chairman.

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF HON. JOSEPH R. BIDEN, JR.

Today, we need to begin to establish the facts that explain why the Clinton White House obtained confidential summaries of FBI reports on former Bush and Reagan administration employees.

Up until now, this issue has been the subject of much speculation, accusation, and unsubstantiated half-truths, with precious little attention paid to the actual facts. The facts are what we are after today—to begin the process of uncovering the truth.

At the outset, I want to be clear that there is no dispute that people's rights were violated. Serious breaches of privacy occurred. Although there may be an explanation for what occurred, there is no justification. It shouldn't have happened.

But now we need to move beyond expressing outrage at what occurred and figure out why it occurred. To this end, for two weeks, our committee has conducted an investigation. Fifteen people have been interviewed. Numerous agencies have provided information. Thousands of pages of documents have been collected.

Based on the evidence I have seen thus far, the improper acquisition of FBI information on former administration employees was the result of bureaucratic blunder rather than an intentional plot to obtain dirt on political enemies. Testimony of career civil servants, together with logs books and other evidence, indicate that the improper requests for FBI information were the product of an inexperienced and poorly trained staff undertaking a complex, but justifiable, project.

There is also convincing testimony that the list of names provided by the Secret Service and used as the basis of the requests for FBI information were seriously flawed and are at least partially to blame for what transpired.

Because this is a complicated matter, and one which has been subject to gross distortions, I want to explain, in some detail, my understanding of the facts thus far, which were established in staff interviews and will be discussed by our witnesses today.

Let's go back to Inauguration Day in January 1993. At this point, virtually every shred of paper in the White House, including the files of the White House Office of Personnel Security, have been boxed up and removed for transfer to President Bush's Presidential Library.

Soon after President Clinton is inaugurated, Craig Livingstone is hired to be the Director of the White House Office of Personnel Security. He replaces a veteran White House employee who served in four Republican administrations.

By the end of March, only one holdover person—Ms. Nancy Gemmell—remained in the Office of Personnel Security, and she retired in August, taking with her the only remaining institutional knowledge of the office's operation.

Replacing the office's experienced personnel with severely underqualified new staff—including Craig Livingstone as the Director—was a serious mistake in judgment. Mr. Livingstone did not have the experience to run an office involving such sensitive security matters, nor to my knowledge did any of the other new staff brought on board.

In the early months of the Clinton administration, the priority for Mr. Livingstone's office was to get new employees processed for permanent passes to access the White House complex.

Although this process was far from complete, by late May or early June, the one remaining experienced employee, Ms. Gemmell, began the process of updating the files of hold-over employees. This task became known as "Project Update."

Let me emphasize this point. Project update—which eventually led to the improper requests for FBI information—was initiated at the suggestion of a twelve-year veteran of the office, who informed Mr. Livingstone that the project needed to be undertaken.

This project, as begun by Ms. Gemmell, was no different from identical efforts that took place following the Carter, Reagan, and Bush transitions. Had it been properly completed, we would not be here today.

What was Project Update and why did it have to be done? The project consisted of re-creating the personnel files for all the hold-over employees which has been removed from the White House at the end of the Bush administration.

According to Ms. Gemmell, there were two reasons why every administration requested and reviewed FBI files on holdover employees:

First, the new administration was entitled to decide for itself the suitability of individual employees, based on their backgrounds, for employment in the White House.

For example, a new administration might not want to employ anyone who had failed to pay child support, or anyone who had large numbers of outstanding parking tickets.

Second, the files had to be recreated to determine if an employee's background investigation needed to be updated. According to Ms. Gemmell, both the Bush and Clinton administrations had a policy requiring that investigations be updated every four years.

To begin the project, Ms. Gemmell requested a "Special Report" from the Secret Service. She needed to make a special request because the forms used to obtain FBI reports required the date and place of birth for each employee and that information did not appear on the passholders lists routinely provided by the Secret Service.

This special report, like all lists received by the office of personnel security, was supposed to contain only "Active" passholders—those persons who currently were authorized to enter the White House Complex.

On or about June or July, 1993, Ms. Gemmell received the special report from the secret service. This report was not one single alphabetical list, but rather was organized by each White House Department, and was then alphabetical within each department.

So, for example, there was one section alphabetically listing General Service Administration employees, a section alphabetically listing the National Security Counsel employees, one for persons who worked in the residence, one for the President's Staff, and so on.

On receiving the list in the summer of 1993, Ms. Gemmell said that she took the list apart to have a number of clerks start typing a file label for every name on the list.

Then, using a standard form with the typed signature of the White House Counsel, she began requesting files from the FBI based on the list she had received from the Secret Service. She started with departments that would experience the least amount of turnover—such as the telephone operators from AT&T or other GSA employees.

Offices that experienced great turnover, such as the President's staff, were to be saved for later in the process so the office could be sure that anyone intending to leave had left by the time the updating process began.

Before Ms. Gemmell left her job, she met with Anthony Marceca for several hours to discuss office procedures. During that discussion, she provided Mr. Marceca with a broad outline of project update, but did not brief him on the step-by-step details of how the project should be conducted.

Ms. Gemmell departed on August 13. Mr. Marceca started his detail on August 18. The documentary evidence submitted to this committee supports the fact that Mr. Marceca followed Ms. Gemmel's model of how to complete the project.

Three days ago, Mr. Marceca provided the committee with a log book documenting, day by day, the FBI summaries that he received from the FBI in response to his requests. These logs indicate the office in which each person worked.

For example, Mr. Marceca's log indicates that on September 20, he received reports he had requested, in alphabetical order, on National Security Counsel personnel. He then received reports on residence employees from September 24-29. Then, on November 3-6, he worked on GSA employees with names beginning with the letter "f" through "y."

Only in mid-December did he begin the series of requests on the President's staff that gave rise to these hearings—saving this department for last, just as Ms. Gemmell instructed.

Moreover, the recently released documents include memoranda, from Mr. Marceca, to administrators in each division, requesting information on whether persons on his list were actually still employed. Remarkably, it appears that Mr. Marceca asked for the FBI files first and then asked later whether the persons on the list were still working in the White House.

Although the log and the memoranda demonstrate gross ineptitude and a failure to comprehend the sensitivity of information gathered by the FBI, they also demonstrate that Mr. Marceca was engaged in a purely bureaucratic exercise.

Moreover, the fact that he so carefully recorded each file he requested and acknowledged this publicly to White House employment supervisors speaks to his innocent motive.

Why, if someone wanted to covertly dig up dirt on political opponents, would he create a paper trail a mile long documenting each step of the operation?

Two other sets of documents corroborate that Mr. Marceca was merely walking through each category of office on the Secret Service list, department by department, name by name.

First, the FBI has provided the committee with its log book containing every name check, request for previous report, or other type of security request that came from the White House in 1993-94.

Over the last several days, my staff sifted through the approximately 18,000 requests for FBI information during this period and made a list of "requests for previous reports"—the type of request submitted by Mr. Marceca to the FBI which are at issue here.

My staff then made a chronological list of these requests. Copies of this analysis have been provided to each member. Although the pattern is not perfect, it distinctly shows a series of alphabetical requests, by office within the White House, running from the time Ms. Gemmell started project update in the summer of 1993 through February 1994 when Mr. Marceca returned to the Army.

Second, the FBI has completed a partial review of the same information my staff looked at and also concluded that the original "A" through "G-O" list was only part of a larger project. The FBI noted another alphabetical series of "Requests for previous reports" running from "F-R" to "Z"—which were requested from October 29, 1993, to November 26, 1993.

This evidence again strongly suggests that, when Mr. Marceca finished one of the departments on the list in November, he then picked up the President's staff and began again with the letter "A." He stopped at "G-O" in February, 1994 when his detail expired.

But the evidence that this project was a bureaucratic exercise still does not explain why, when Ms. Gemmell and Mr. Marceca were working off a supposed list of active passholders, reports were requested on so many former Bush administration employees, and even employees from the Reagan administration.

We may never know the answer to this question for sure, because the lists that Ms. Gemmell and Mr. Marceca were working no longer exist, but there is strong evidence that the lists provided by the service were inaccurate.

First of all, as with any computer database—the information you get out is only as good as the information that goes in. It is clear that there were problems—particularly during transitions between administrations—where the information on departing employees was not being received and processed efficiently by the Secret Service.

Second, there is evidence that directly contradicts testimony received by the committee last week that there were no technical errors in the Secret Service computer systems that could have led to errors in the active passholder list.

Both types of problems seem to have infected the Secret Service passholder lists, and a number of witnesses have specifically told committee staff that, in the early part of 1993, there were errors in the passholder lists being produced by the Secret Service.

Charles Easely, who has served as head of the Security Office for the Executive Office of the President for 10 years, stated that he was aware of multiple incidents where names of individuals who had left the White House years ago were contained in passholder rosters produced and distributed by the Secret Service in 1993.

In fact, Mr. Easely stated that he was aware of one person—his former boss—who remained on the list for five years after he left his White House job.

In addition, members of the White House Office of Administration have told the committee that in December, 1993, the Secret Service database of "active" passholders still contained names of approximately 300 individuals who had already departed the White House.

These individuals, several of whom are career employees, stated that when they confronted the Secret Service with these problems, the Secret Service responded that its computer system was not performing properly and that an outside contractor had been hired to fix the problem.

Jeff Undercoffer, a Secret Service agent assigned to the White House, told committee staff that a mechanical error in the Service's computer system resulted in

former Secretary of State James Baker's name remaining on the "active" passholder list for more than a year after his White House service had ended.

Indeed, Mr. Livingstone complained to him in late 1993 or early 1994 that the active passholder list was inaccurate because James Baker's name was still on it.

Even if the databases were in perfect condition, errors could have occurred because it appears that Mr. Marceca did not update the list as he should have when he began to work through departments with high turnover rates.

Taken as a whole, the evidence the committee has gathered suggests to me that a number of factors may have contributed to the improper requests for FBI information:

There was a very inexperienced staff in the White House Office of Personnel Security in 1993, who received little, if any, formal training.

Once Ms. Gemmell left in August, no one remained who had ever conducted an update project before.

The primary person performing the project, Mr. Marceca, received few, if any, detailed instructions on how to complete the project. Mr. Marceca apparently did not request an updated list from the Secret Service as he moved to departments with higher rates of turnover—though he did make belated efforts to confirm with individual departments whether the names he had on the list he was using were accurate.

Add on top of that the fact that there were errors in the Secret Service database, which may have compromised the accuracy of their lists.

These ingredients are the makings of a major league screw-up.

In contrast, the investigation by the committee has to date uncovered no facts that support any theory of an "Enemies List" or political dirty tricks conspiracy.

No one has even alleged that any information from an FBI report has been used against them. No one has stated that an FBI file was removed from the Office of Personnel Security improperly.

No one has documented that any unauthorized person has obtained access to an FBI file. No one has testified that FBI files were improperly copied or reviewed by unauthorized persons.

I am not defending Mr. Livingstone's operation. The staff, from Mr. Livingstone on down was too inexperienced; the security procedures were too lax.

In my view, an office that contains confidential, sensitive information is no place for interns, volunteers, or, for that matter, detailees. It should have been staffed by experienced professionals, as it had been in prior administrations.

The Clinton administration deserves criticism for its hiring decisions, its use of interns and volunteers in sensitive positions, its lack of professionalism, and its loose policies.

But, to date, I have not found any convincing evidence of intentional wrongdoing, underhanded motives, dirty tricks, or political hatchetry. And I certainly have not seen evidence that would justify the hyperbole and gross exaggerations indulged in media reports and comments by certain Members of Congress.

And I must add, at this point, that neither the FBI nor the Secret Service have played a particularly helpful role in uncovering the facts of this incident.

The June 14 report of the FBI General Counsel, Howard Shapiro, stated that the FBI received 481 requests for information from the White House That "b[ore] the characteristics of a single series." But Mr. Shapiro failed to take the important step of looking both forward and backward from this "single series" to see if the 481 files were part of a larger project.

A few members of my staff were able to reconstruct the entire 1993-1994 time period based on data provided by the FBI. Surely the FBI should have done so before issuing a report that created the impression that a mysterious search for files of persons with names ending in "aa" through "go" had taken place and then claiming that it had been victimized by the White House.

Let's make one thing very clear. The ultimate responsibility for how confidential information is treated rests with the party that gathers that information. Undoubtedly, the White House shouldn't have requested the information. But it is equally true that FBI should have never released it. Both parties share the blame for this sorry episode.

I am also disappointed by the Secret Service. One week ago, Robert Miller, the Assistant Director of the Secret Service, testified that it "had uncovered no flaws which can be attributed to our pass-holder database * * * that would generate an outdated list." During testimony before committee staff last night, however, an agent acknowledged that as early as January, 1994, the Secret Service was made aware that former Secretary of State Baker was showing up as "active" on the lists, even though he was "inactive" on the computer system itself.

I believe that it is time for the finger-pointing and overblown accusations to end and an emphasis on the facts to begin. I am confident that this will occur through our hearing today.

The CHAIRMAN. Thank you, Senator Biden.

Now, we are going to have to run a fairly tight hearing here because we have got a lot of witnesses and a lot of questions. I am going to limit every Senator to 7 minutes, and I am going to be tough on calling the time, because the last hearing we had just went on and on, and, frankly, we are going to operate this thing with some discipline.

Senator BIDEN. I hope we operate it, though, making sure if we have a line of questioning that makes sense, we will follow the line if it takes 10 hours, Mr. Chairman. We are here for the facts. We are not here for some damn schedule.

The CHAIRMAN. Well, I am going to cut everybody off after 7 minutes, including myself, so that is the way it is going to operate. And I hope we can get our questions asked. So we will begin and put the light on. When you see the red light, that is it.

Mr. Livingstone, let me ask you a series of questions that really I think are important. What was your position during President Clinton's inauguration events?

Mr. LIVINGSTONE. During the inauguration, sir, I was the Director of Security for the Inaugural Committee.

The CHAIRMAN. And who did you work for then?

Mr. LIVINGSTONE. I believe my direct supervisor would have been Ms. Sherrie Carter, the Director of Operations.

The CHAIRMAN. Who hired you for that job?

Mr. LIVINGSTONE. Ms. Sherrie Carter and I believe I also interviewed with Ms. Nancy Jacobson, who was the finance director.

The CHAIRMAN. Upon the recommendation of whom, do you know?

Mr. LIVINGSTONE. I was known to Ms. Jacobson, and I believe Ms. Jacobson and others recommended me to Ms. Carter. I don't believe Ms. Carter knew who I was.

The CHAIRMAN. How did you apply for your position at the White House?

Mr. LIVINGSTONE. I, like many other people on the Inaugural Committee, sir, filled out paperwork requesting to work to the President-elect committee for campaign work, campaign staffers. I spoke to various individuals about seeking their assistance in finding employment in the new administration.

The CHAIRMAN. Who were those individuals?

Mr. LIVINGSTONE. I believe that I spoke to—what comes to mind most clearly would be Ms. Christine Varney, who became the President's Cabinet secretary. I believe I spoke to—I am trying to be precise. That is why I am pausing, sir.

The CHAIRMAN. Take your time.

Mr. LIVINGSTONE. I believe I spoke with members of Mr. Gore's staff, as I had worked for them in 1988 and done some brief advance work in this campaign, possibly Mr. Roy Neill and Mr. Peter Knight. I am not exactly sure, but those are the kind of people that I would have talked to.

The CHAIRMAN. Did you have anybody at the highest levels of the White House advocating for this opportunity for you?

Mr. LIVINGSTONE. I am sorry. The highest levels would mean? The CHAIRMAN. Mr. Foster, that level or higher?

Mr. LIVINGSTONE. I didn't know Mr. Foster.

The CHAIRMAN. The President, the Vice President, Mrs. Clinton, whoever.

Mr. LIVINGSTONE. Certainly not the President, Mrs. Clinton, or the Vice President.

Senator SIMON. Could you pull that mike up just a little bit?

Mr. LIVINGSTONE. Yes, sir. I would be happy to.

Senator SIMON. Thank you.

The CHAIRMAN. When you were told that you would begin working at the White House, who told you that you got the job?

Mr. LIVINGSTONE. I understand that it seems a little more mysterious than it sounds, and I am going to try to be very clear today so I don't repeat what happened the other day.

I left the Inaugural Committee at the completion of the Inaugural. I worked on an advance project for Ms. Christine Varney when the President and the Vice President met with their new Cabinet. I believe that I spoke to Ms. Varney about her assistance in looking for employment.

As I recall it, sir, I met someone in counsel's office. Many people have testified or several people have testified that it was Mr. Foster. I just don't recall who it was who sent me then to Ms. Cheryl Mills, who was associate counsel at the White House. I had a very brief discussion with her about the possibility of working in the White House security office. She very briefly described the job as an administrative function. Within days—excuse me, let me finish that conversation. She said that she did not think she would be running that office, but someone that would be appointed soon would be running that office and that person would make a decision.

The CHAIRMAN. Did she name that person?

Mr. LIVINGSTONE. I'm sorry?

The CHAIRMAN. Did she name that person?

Mr. LIVINGSTONE. Yes, sir. Eventually, that was Mr. William Kennedy.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. And in those few days, I believe I came on board on February 7.

I'm sorry. Perhaps I didn't understand the question. Did you ask me if Ms. Mills said it would be Mr. Kennedy? I thought you said would you name that person who became—

The CHAIRMAN. I met Mr. Kennedy.

Mr. LIVINGSTONE. OK. Ms. Mills did not tell me it would be Mr. Kennedy.

The CHAIRMAN. OK. But that is—

Mr. LIVINGSTONE. But it became Mr. Kennedy—

The CHAIRMAN. That is who it was.

Mr. LIVINGSTONE. Right. And as I recall it, sir, I came on in the first week of February, which is only a week or so after the Inaugural.

The CHAIRMAN. But was it Mr. Kennedy who hired you? Or who was it that hired you?

Mr. LIVINGSTONE. As I understood it, I was supposed to cool my heels until—that is the best description I can give, cool my heels—until the person, which ultimately became Mr. Kennedy, was appointed in the job that would be my supervisor. I then met with Mr. Kennedy, shortly thereafter submitted my paperwork, and I was led to believe that I was hired. And, you know, I was told to go to the office and start working.

The CHAIRMAN. So as far as you know, Mr. Kennedy was the person who finally passed on hiring you, to the best of your knowledge?

Mr. LIVINGSTONE. To the best of my knowledge, yes, sir. And I am not trying to be evasive. I just—

The CHAIRMAN. I understand.

Mr. LIVINGSTONE. No one said, "hey, you got the job, you're hired" type of thing.

The CHAIRMAN. Did you have any training, experience, or background in law enforcement or security before being hired by the White House as Director of the Office of Personnel Security?

Mr. LIVINGSTONE. No, sir. As I said, as described by Ms. Mills, the job that I ultimately entered into was described to me as being largely administrative, that counsel would first get any background information that would be then sent to me and—

The CHAIRMAN. The point is you had no background in those areas?

Mr. LIVINGSTONE. Well, we didn't—that office didn't do any law enforcement work, sir. That is why I was—by way of description, I was trying to—

The CHAIRMAN. Yes, but I am asking with regard to the Office of Personnel Security.

Mr. LIVINGSTONE. I had no formal law enforcement training. During the campaign I worked with the Secret Service.

The CHAIRMAN. As an advance man or as a worker in the Clinton campaign?

Mr. LIVINGSTONE. Absolutely, sir.

The CHAIRMAN. But not as a member of the Secret Service?

Mr. LIVINGSTONE. That is correct, but I hired—during the Inaugural Committee, for example, I hired several senior retired protective—Presidential Protective Division agents so that we could be trained and appreciate their needs. And when we developed the events—

The CHAIRMAN. I understand, but—

Mr. LIVINGSTONE. And, again, you are very correct, sir. I am not trying—

The CHAIRMAN. I understand.

Mr. LIVINGSTONE. It was around advance.

The CHAIRMAN. My point is you had had absolutely no training in law enforcement or security matters before you took over in the White House at the Office of Personnel Security.

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. OK. To your knowledge, did the President, the Vice President, or the First Lady have any role in your being hired at the White House?

Mr. LIVINGSTONE. No, sir, I have no knowledge of that.

The CHAIRMAN. To your knowledge. OK. My time is up.

Senator Biden.

Senator BIDEN. Thank you, Mr. Chairman.

Let me start off by trying to give in 2 minutes the context in which I want to ask these questions, so in the second round maybe it makes some sense.

The June 14 report by the FBI general counsel, Howard Shapiro, who testified last week, stated the FBI received 481 requests for information from the White House that bore the characteristics of a single series. Do you remember he talked about that is how they, the FBI, reconstructed the lists of 481? But Mr. Shapiro failed to take an important step of looking forward and backward from that single series to see if these 481 files were part of a larger project or sat by themselves.

Within the last several days, a few members of my staff have been able to reconstruct the entire 1993-94 time period based upon the data provided by the FBI. This analysis corroborates the testimony of Ms. Gemmell and others that the project update involved a series of alphabetical requests covering different offices in the White House. Surely the FBI should have made a more thorough review before issuing a report that created the impression that the White House engaged in an inexplicable targeted search of files of persons with names Aa through Go.

I am also disappointed with the Secret Service, and we are going to question them a little bit later. A week ago, Robert Miller, the Assistant Director of Secret Service, testified the Secret Service "had uncovered no flaws which can be attributed to our passholder data base that would generate an outdated list." Yet during testimony before the committee staff last night, the Secret Service agent acknowledged that at least as early as January 1994 the Secret Service had been made aware that former Secretary James Baker was showing up on their active list even though the Secret Service E-pass system changed his status from active to inactive as far back as August 1983.

I think it is time to kind of stop the finger pointing here and the overblown accusations and focus on finding what the facts are here. And I believe the process really gets down to these lists. And I would like to begin with you, Ms. Wetzl, although it would make more sense to begin with Ms. Gemmell, whom the chairman will not allow to be part of this panel, to have continuity here so it makes sense. But that is the chairman's call.

You testified that after finding a number of improperly requested files in the vault, you boxed them up, typed up a list of names, and sent the boxes to the White House Office of Records Management. Is that correct?

Ms. WETZL. There was a step that wasn't included in what you just said. I just want to be clear.

Senator BIDEN. Would you tell us what that was?

Ms. WETZL. Sure. The files that I found did contain files that I would need, that were active passholders. So I went through them and pulled those files out that I did need before I boxed the rest up and sent them to Records Management.

Senator BIDEN. Now, I am going to send you down a list, if I can. As I understand it—it is right there. That list, if you take a look at it, it is my understanding, is the list of the 300-and-some people

who you concluded out of the 481 had no need to have their files at the office that you were working in. Is that correct?

Ms. WETZL. Well, I didn't count them, so I don't know that there were 481. I just know that this is what was left over after I took active files out and I boxed them up.

Senator BIDEN. So after you took active files, meaning files that you believed were appropriately requested—

Ms. WETZL. Right.

Senator BIDEN [continuing]. And appropriately should have stayed in the White House, you ended up with a list, the list you have in your hand, a copy of which I have in my hand, again, that had the names of over 300 people—I can assure you it is over 300—over 300 people whose names, whose previous records were requested and should not have been requested.

Now, you boxed that up. Right? You boxed these files listed on that piece of paper, and you sent them off somewhere. Where did you send them?

Ms. WETZL. The Office of Records Management.

Senator BIDEN. Now, this is the list that has been causing such great confusion, at least to me, at our last hearing. It is the list of approximately 331 names that were originally released when this incident first broke. The names James Baker, Marlin Fitzwater, and Billy Dale are on the list you have in your hand.

Isn't it true that Mr. Marceca couldn't have possibly been working off this list? Everybody thought the list you have in your hand was the list Marceca was working off of. It seems to me it is impossible he could have been working off this list of 331 names when he was doing project update because you created this list months after he had left office. Is that right?

Ms. WETZL. That is right.

Senator BIDEN. Now, do you believe that Mr. Marceca was working off a list generated by the Secret Service?

Ms. WETZL. Yes.

Senator BIDEN. Why do you believe he was working off a list generated by the Secret Service as opposed to one generated internally by White House staff or by your predecessor or by him?

Ms. WETZL. Well, first of all, we were all in one office together and had a lot of interaction, and I saw the list that he was working off of. I didn't examine the list for details, but I saw the list, and it was on the distinctive green and white Secret Service paper that is about a foot long and is very thick.

Senator BIDEN. During your tenure at the White House Office of Personnel Security—I am sorry to go so fast, but I want to get this series in before my time is up.

Ms. WETZL. That is OK.

Senator BIDEN. During your tenure at the White House Office of Personnel Security, did you see Secret Service lists that contained the names of people that had already left the White House, who were already gone, who didn't deserve to be on the list?

Ms. WETZL. Yes.

Senator BIDEN. Now, on the worst list you observed, how many former employees were reflected as being active passholders when, in fact, they weren't?

Ms. WETZL. Well, the worst list I saw—

Senator BIDEN. Worst. We are talking about a Secret Service-generated list.

Ms. WETZL. Right. The worst Secret Service list I saw was the one that I found at Nancy Gemmell's work station a long time after she left, and that had hundreds of names on it that I didn't recognize and assumed that they were previous administration employees.

Senator BIDEN. Did you ever discuss this with the Secret Service during your tenure?

Ms. WETZL. The inaccuracy of the list?

Senator BIDEN. The inaccuracy of their list. Did you ever discuss it with them?

Ms. WETZL. Yes.

Senator BIDEN. Did anyone ever mention to you that the E-pass and WAVES systems were not communicating properly with one another and this was leading to the inaccuracy?

Ms. WETZL. I don't remember the terms E-pass and WAVES system. However, they told me that two data bases were not communicating with each other.

Senator BIDEN. So the Secret Service employee told you that—

Ms. WETZL. Yes.

Senator BIDEN [continuing]. The two data bases were not communicating?

Ms. WETZL. Yes.

Senator BIDEN. Obviously in contravention of the testimony of the Director of the Secret Service who was here the other day. He said they had no problem with the data base.

My time is up.

The CHAIRMAN. Senator Simpson.

Senator SIMPSON. Well, thank you, Mr. Chairman.

Obviously, for a couple of weeks we have had a lot of disturbing revelations as to what has happened here and how there has been this gross invasion into the lives of hundreds of private citizens. That is the issue. The issue is not lists. The issue is not how many lists or how old they are, how new they are. Who authorized this intrusion into the lives of Americans? And we know that these security documents, these confidential documents, background files, were left in the hands of political operatives, some who had never even been cleared themselves. That is the issue. Someone with no experience, no investigative, no police, no legal experience, didn't even have a security clearance and held this highly sensitive material. And no one—no one—has been willing to take personal responsibility for hiring you, Mr. Livingstone. No one, which is a rather common trait at 1600 Pennsylvania Avenue. No one—no one—takes the responsibility.

Who came up with the list or lists? It is a very serious matter, and we are only beginning to learn a bit about it, and I hope we can do that in a bipartisan way. We may never learn the true extent of any damage that has been done to people through these acts, but we have all been made now fully aware of the personal and sensitive information that is contained in those files. We can all—on this committee especially—tell the American people what is in it. It is about medical consultations, financial transactions, use of controlled substances, legal actions, gossip, innuendo. It is all in

there. That is the offensive part of this whole thing, and it is the duty of this Congress to find out why that happened and this egregious use of power will not happen again. That is the issue.

There were names on the original list; there were names not on the original list. Brent Scowcroft, for example, was on the computer disk that Mr. Marceca took home and turned in this week. That reminds me of Gilbert and Sullivan: "I have got a little list of society offenders who never would be missed," and it goes on. I could sing it, but I won't.

Senator LEAHY. Thank you.

Senator SIMPSON. That is all right. Leahy and I were going to do a duet on it, but not now.

So here we are. I am not here to pick on or heap it on or do anything, but you heard the chairman when he opened his remarks. He had a ton of "Why?" Why this, why that, a list of why's that were longer than the list of people who were investigated by this White House. And it really ain't that complex. This is not a complex issue. So whatever cats and dogs are going to drive through here today with regard to this other stuff, the problem is you have now both raised your right hands and taken an oath to tell the truth. And that is something that transcends all the rest of it.

I can tell you that here is where the rubber hits the road. Here is where perjury lies. The other things are just things. But here is where a sentence of prison lies, more than anything you could have done before, whether obstruction or not doing it properly and so on.

Let me ask you, Mr. Livingstone: You worked for Al Gore in 1988. For how long did you work for Al Gore?

Mr. LIVINGSTONE. To the best of my recollection, a few months.

Senator SIMPSON. What did you do?

Mr. LIVINGSTONE. Advance.

Senator SIMPSON. Did you work for any political people before that?

Mr. LIVINGSTONE. Yes, sir.

Senator SIMPSON. Who?

Mr. LIVINGSTONE. I worked for Senator Gary Hart on his campaigns; Walter Mondale in his 1984 Presidential bid; Geraldine Ferraro in her Vice Presidential bid; Council Member Charlene Drew Jarvis in Washington, DC; Senator, then Congressman, Timothy Wirth, briefly on his campaign, and then briefly on his Senate staff.

Senator SIMPSON. Would you describe yourself as a political operative?

Mr. LIVINGSTONE. Well, prior to the last couple weeks, sir, I didn't know that that was a phrase that meant something evil. And if I could, just by way of explanation, I don't think that that is an evil term. I mean, I have always worked in campaigns, mostly doing advance, for little or no pay, with the idea of trying to help somebody that I believed in get elected.

Senator SIMPSON. But I didn't ask you whether it was an evil term or not. Would you describe yourself as a political operative?

Mr. LIVINGSTONE. I think I would describe myself as someone who is interested in the process, and at different points of my life, I have worked as an advance man, an executive assistant, commu-

nity relations person. But I never had the term political operative applied to me.

Senator SIMPSON. But would you describe yourself as a political operative? That is what I am asking.

Mr. LIVINGSTONE. Well, based on what I have read in the paper the last couple week, I would care not to describe myself as a political operative.

Senator SIMPSON. Well, I understand that, too. But let's leave it at that. But you were the former Director of the White House Office of Personnel Security, which was a position that did not call out for a political operative. It called out for a professional person skilled in this area, and there was one there before. Do you disagree with that?

Mr. LIVINGSTONE. Well, sir, by way of explanation, I know for a fact, reading Ms. Gemmell's resume, she worked in correspondence in, I believe, Rosalynn Carter's office. She held a number of jobs at the White House that never led me to believe she had any security training whatsoever.

Senator SIMPSON. No, but I don't believe she was a political operative, and that is what I am saying, and that is only what I am saying, whoever it was.

Mr. LIVINGSTONE. By way of explanation, sir, she had a number of political jobs, as I did.

Senator SIMPSON. Well, my time is quickly expiring, but just a quick one of Ms. Wetzl. Of all the lists and the lists and the lists and the non-lists and the long lists and the short lists and the subtitle lists and the sub-administration lists and so on, did you recognize people on there who were people who were involved in previous administrations?

Ms. WETZL. Yes.

Senator SIMPSON. Why then would Mr. Marceca not recognize names like Brent Scowcroft, Marlin Fitzwater, James Baker, Kenneth Duberstein, James Brady, and Robert Gates in the same light?

Ms. WETZL. Well, Brent Scowcroft is not on this list.

Senator SIMPSON. But he was on the disks that Mr. Marceca took home.

Ms. WETZL. I really don't know. You would have to ask him.

Senator SIMPSON. Yes, I think that would be a good idea. Thank you. [Laughter.]

The CHAIRMAN. Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Chairman, I know congressional hearings are supposed to be for a constructive purpose, and it has been suggested that perhaps these hearings have had a partisan touch to them, which would be, of course, totally unprecedented and, to quote Casablanca, I would be "shocked, shocked" to see that happen. But let's talk about some of the things that could come—

Senator SIMPSON. I can't hear, Pat.

Senator LEAHY. Beg your pardon?

Senator SIMPSON. It is tough to hear.

The CHAIRMAN. There, just bring it closer.

Senator LEAHY. I was saying that some might have suggested these were partisan hearings, and, of course, we wouldn't want

that to happen and, like in Casablanca, we would be "shocked, shocked" to think it might be. But on the outside chance, Mr. Chairman, that something constructive could come out of these hearings, we might tighten up the routine access exception to the Privacy Act.

Last week we had what the Washington Post described as a fast-paced series of leaks and pronouncements from congressional committees about what was going on. I know you are as concerned as I am about these unauthorized disclosures.

We have transcripts here in envelopes marked For Members Only, but it appears that somebody else who had access to these transcripts gave the press the transcript of FBI Agent Sculimbrene's interview. Well, that obviously shouldn't have happened. If we are going to have selective leaks, let's get it all out here and let the press see some of these things in context, not just what some political operatives and the Congress want them to see.

You know, the FBI report described this matter as involving egregious violations of privacy but, of course, concluded the FBI did not violate the Privacy Act. Well, then, we have to wonder what good is the Privacy Act if it doesn't cover such egregious violations of privacy unless they think if they give out so much, it is a routine exemption. So I would suggest if something good might come out of these hearings, let's tighten that up.

Let me ask Mr. Livingstone a couple questions. Mr. Livingstone, let's go to the things that we are actually supposed to have these hearings to learn. Did President Clinton ever ask you to get FBI files on former White House employees from Republican administrations? Yes or no.

Mr. LIVINGSTONE. No.

Senator LEAHY. And did the First Lady ever ask you to get FBI files on former White House employees from Republican administrations?

Mr. LIVINGSTONE. No.

Senator LEAHY. Did the Vice President ever ask you to get FBI files on former White House employees from Republican administrations?

Mr. LIVINGSTONE. No.

Senator LEAHY. Did Vince Foster ever ask you to get FBI files on former White House employees from Republican administrations?

Mr. LIVINGSTONE. No.

Senator LEAHY. Did the counsel to the President, Bernard Nussbaum, ask you to get FBI files on White House employees from former Republican administrations?

Mr. LIVINGSTONE. Now here I am going to stop you, just because I want to make sure I understand the question.

Senator LEAHY. Well, the question is pretty clear. Did the counsel to the President, Bernard Nussbaum, ask you to get FBI files on White House employees from former Republican administrations?

Mr. LIVINGSTONE. If a member from a former administration, sir, were, say, appointed to the President's Foreign Intelligence Advisory Board, something like that—I am just trying to be precise here because of the Senator's instructions.

It would be an appropriate thing for someone from counsel's office to request a Republican—

Senator LEAHY. So if somebody—

Mr. LIVINGSTONE. Only—only—the answer would be—

Senator LEAHY. If somebody is going to go into this administration.

Mr. LIVINGSTONE. Right, but I want to explain it rather than just say only within the pursuance of my duties, so you understand the example.

Senator LEAHY. I understand. So, in other words, if the administration, as it has, is appointing people from past administrations—

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. Then they would ask for the file.

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. I have also read in the press allegations that come from unspecified sources that your mother is a close friend of the First Lady. Is she?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. And you have no idea who those sources are that tell these things?

Mr. LIVINGSTONE. No, sir. I have asked my mother, and she, for the record, says that she has never met Mrs. Clinton.

Senator LEAHY. Well, the other night I was at an event here on the Hill, and one of the key chairmen here was not there right at the moment while there was a fire at the Treasury Building. We assumed that he was immediately calling a hearing to disclose how Mrs. Clinton started the fire at the Treasury Building. We seem to have these allegations go out immediately.

Mr. LIVINGSTONE. I have no knowledge of that. [Laughter.]

Senator LEAHY. You had nothing to do with the fire. I mean, by about tomorrow there will probably be an article in the press saying that the suggestion or the statement was left unanswered whether Mr. Livingstone started the fire at the Treasury Building. Do you want to state categorically you did not do that, sir?

Mr. LIVINGSTONE. I categorically deny that.

Senator LEAHY. Thank you. We would have had a hell of a story if you had said otherwise. [Laughter.]

Ms. Wetzl, did the printouts of Secret Service passholder lists show the date the printout was made?

Ms. WETZL. It may have. I can't recall.

Senator LEAHY. Correct me if I am wrong on this, but as I understand your testimony, when you started to work on the update project and you looked at the Secret Service list that Mr. Marcea had been using, you determined the list was out of date. Now, did you determine that by looking at the names on the list or at the date the printout was made?

Ms. WETZL. To be clear, I don't recall looking at Tony's list after he had left.

Senator LEAHY. But you looked at a list that you determined was out of date?

Ms. WETZL. What I did was look at the files—that I recall—is look at the files that he had ordered and assumed that the list he was working off of was out of date; also, because I went over and

looked at Nancy's work station and the list that she had been working off of was out of date.

Senator LEAHY. And how did you determine, one, in the case of the files and, second, in the case of Nancy's list that it was out of date?

Ms. WETZL. I made that assumption because I didn't recognize a great deal of the names, and—both on the files and the list, and I recognized a couple that I didn't think were on access to the White House.

Senator LEAHY. OK. And you did what then?

Ms. WETZL. Over a long period of time, over a few months, I figured out a way to figure out who exactly we did need out of those files.

Senator LEAHY. Mr. Chairman, I imagine my time is up. I will wait until my next round.

The CHAIRMAN. Thank you, Senator Leahy.

Senator Grassley.

Senator GRASSLEY. The foundation for the White House's and these witnesses' explanation of what happened is a faulty Secret Service list. There was a computer glitch that caused an outdated list to be printed, and based upon the computer problem, 477 files were mistakenly requested.

The actual list used by Mr. Marceca has never been produced. It has not even been identified properly. No title, no date. All we have heard is a bunch of hearsay about outdated lists.

So in the absence of the list used, we have to speculate based on what we know about the various lists. Obviously, we are looking for a list that includes the names of all 477 of the innocent victims.

It is fair to say that the unauthorized file request did not happen on Nancy Gemmell's watch. She had the best handle on the process. She is the only one who can accurately describe the kinds of lists that the Secret Service provided.

According to her deposition, there were three lists routinely provided by the Secret Service: An access list that was for limited access, covering a 2-week period of time, at the end of that period these people would be dropped or extended a bit; a temporary list that was normally for about 90 days, it was a chronological list, not an alphabetized list; and then, third, the pass list, this was the monthly list, it is the E-pass list of passholders.

The White House sent a box of documents to the FBI related to the update project. In that box are numerous access lists and temporary pass lists, exactly as Ms. Gemmell describes. But those aren't the lists that we are looking for. They are lists of new employees. They don't contain the names of the 477 Republican victims. My staff has reviewed those lists.

That leaves the E-pass list. There are two versions. One is list of just actives. It is called the actives list. The other is the master list. It has both actives and inactives.

The Secret Service has provided us with an actual actives list this morning, from July 1993. This was a month before Mr. Marceca arrived to work on the update project. This July list here does not include 379 names of the 477 universe of unauthorized names. Eighty-five of the remainder were correctly listed as active.

There were 13 exceptions to this. We will get all the details from the Secret Service this morning when they give us their testimony.

Almost a year prior to that—in other words, on December 31, 1992—282 of the 477 names were not on the actives list. They had long since left the White House. They were inactive. In other words, two-thirds of the 477 were inactive on the Secret Service's computer list before the Clinton administration began. Before Mr. Marceca even arrived, 389 of the 477 were inactive.

So no actives list produced by the Secret Service had 477 of these victims listed at once. Unless, that is, one of our witnesses can produce one. But there was a list with all 477 names. That was the master list. It was the one that had most of them listed as inactive.

If someone didn't know what the "I" or "A" meant after each name, they might confuse this list with an outdated list. Indeed, Mr. Marceca has said that he believed "A" meant access and "I" meant intern. His statement can be found on pages 66 and 67 of the House deposition. Ms. Wetzl said that she was unfamiliar with the "I" and "A" column.

The master list was also convenient if someone wanted a cover story in case they got caught. They would simply say it was an outdated list. It had all these old Republicans on it. "I" stood for intern, as Mr. Marceca said.

So assuming it was the master list that was used, there is another problem. The 477 names, A through G, were a subset of the total list of A through G names. There were the names of those who were active, plus it doesn't have other names that should have been on any of the A through G list. For example, I would like to ask why the names of people on Mr. Marceca's list doesn't include, for instance, names like this: our colleague, Senator Spencer Abraham, as an example; Christopher Cox; Linda Chavez. I have about 16 or 17 other names here.

If this was a routine bureaucratic exercise that was being handled alphabetically, why were these and other names not on that list?

My suggestion is there was some selection taking place. And if that is the case, we can't rule out that the motives of this exercise might be sinister as opposed to innocent mistakes.

To sum up my argument, this project was based on a list that would give them a cover story in case they got caught, and there had to be a selection going on because it doesn't make sense that a list would exist with just these 477 names on it.

I don't know why these 477 were selected. I will leave that for others to speculate. We may know more about that later. I am merely challenging the assertions made by these witnesses and the White House that it was an innocent mistake and that the Secret Service computer glitch was the cause.

Ms. Wetzl, you mentioned that you saw Mr. Marceca working from a thick computer service list—Secret Service computer list. Could you tell me which of these two lists it would resemble more? These two lists, which one would you say, this fairly thin list or this fairly thick list, would be the one that you said you saw Mr. Marceca working off of?

Ms. WETZL. I don't believe it was as thick as that one you are holding, but it also looks to me like that list you're holding is xeroxed. And so it is a different color. It doesn't look like—

Senator GRASSLEY. It is on computer paper.

Ms. WETZL. I can't see it from here. It looks black and white.

Senator GRASSLEY. Computer printout paper.

Ms. WETZL. Secret Service lists are green and white.

Senator GRASSLEY. Are you—

Ms. WETZL. Are you asking me about the thickness only?

Senator GRASSLEY. Yes, would it be about this size? Because this is the list that the Secret Service had that included all the names.

Ms. WETZL. The list that Tony had, it resembled the list that we used—

Senator GRASSLEY. So this isn't—

Ms. WETZL [continuing]. Which were not that thick that I recall.

Senator GRASSLEY. It wasn't this thick?

Ms. WETZL. I don't believe it was that thick, no. I don't remember it—that would have been—that would have stood out to me if it was that thick. I think.

Senator GRASSLEY. But you say it wasn't this—it wasn't this thin either, though. Right?

Ms. WETZL. It is hard to say because they are folded over. They are all—it is perforated lines, and they are all—the pages are attached and they are folded over.

Senator GRASSLEY. I would suggest that we take these down to her and let her take a good look at them.

The CHAIRMAN. Senator, your time is up. OK. Let's go to—

Senator BIDEN. I would like to have Ms. Wetzl to respond.

The CHAIRMAN. I would be happy to do that, if you would desire.

Ms. WETZL. Sure, sure. I would also like to add that there were several different Secret Service lists that we received in different formats, and I don't know which format Tony was using, which type of list that he had.

Senator GRASSLEY. Well, obviously, the master list, the thick list, is the list with inactives, and if it was a thick list, that supports my point about the fact that the information couldn't have come from that list, but, anyway—

Ms. WETZL. Well, Senator, that—

Senator BIDEN. Mr. Chairman, that doesn't—

Ms. WETZL. I'm sorry.

Senator BIDEN. There is testimony from the witness we are having up here saying that the big list was broken into sublists by perforating them based on office, breaking them off. And if we had that testimony, it might help clarify the concern that the Senator from Iowa has.

The CHAIRMAN. You will have the opportunity of asking questions. Senator, is there anything else?

Senator GRASSLEY. Well, no, just this point. I suppose the fact that Mr. Marcea isn't here—we could have gotten an answer to this question, so that is going to make it—

The CHAIRMAN. I understand. Senator Heflin.

Senator HEFLIN. Thank you.

Ms. Wetzl, you testified in regards to Senator Biden's question that someone in the Secret Service told you that there were prob-

lems relative to the two data bases, as you described it. Can you recite what was told to you about that relative to this?

Ms. WETZL. Sure. From what I recall—and I don't remember which specific employee it was that told me this, but it was one of the women that worked in the U.S. Secret Service Technical Services Division office. And I said—you know, I had brought up the fact that I had to delete these names from the list and just that the lists were inaccurate. And she said that they had had a problem with the two data bases communicating and that they were having somebody work on it.

Senator HEFLIN. Do you remember when that was that you were told that?

Ms. WETZL. I don't. I'm sorry.

Can I add something, Senator Heflin?

Senator HEFLIN. Yes.

Ms. WETZL. I was also told that the Secret Service had undertaken—and we weren't involved in that; the Office of Personnel Security wasn't involved in that—a purge of their list and that they had no way of figuring out what permanent passholders, previous administration employees were still working in the complex either. So what they did was put the word out that everyone who was still there who needed access had to come to Secret Service and pick up a new permanent pass. And then that way anybody who didn't show up, they took off the list.

But the date, I believe—and this is sticking out in my head, and I could be wrong, but the date that I believe they told me they told everyone to show up was October of 1993. And for a while after that, they still had problems because, you know, people wouldn't show up at the right time to pick up their pass, and so they couldn't get into the building, and so they would have to get new passes and all that.

Senator HEFLIN. And you say that that was—what was the date when they told you that?

Ms. WETZL. Again, I don't remember.

Senator BIDEN. Excuse me, Senator. In October you were aware that they were updating—that they had purged their list by saying everybody who has to be here, come and ask for a new pass?

Ms. WETZL. No. It was after the fact that they told me they had done this, conducted this purge, and I believe that the date that they conducted the purge—for some reason it is sticking out in my head, and I could be wrong—was October.

Senator BIDEN. If the Senator would yield one more second, when did you come on? When did you begin work there?

Ms. WETZL. I began working in that office as an intern in June of 1993. I was put on the payroll in August.

Senator BIDEN. But can you give us a month or a time when you had this conversation, not an exact date, when you had the conversation when you were told they were trying to fix their lists?

Ms. WETZL. I can only assume that it was after I started working with that type of list that I needed it for the update project.

Senator BIDEN. And that is my question. When was that?

Ms. WETZL. Right. I believe it may have been—I may have done some work on it before the fall of 1994, but I really threw myself into it sometime after the fall of 1994.

Senator BIDEN. Thank you.

Senator HEFLIN. Mr. Livingstone, the White House Office of Personnel Security, what was its responsibility and what was its work? What did it do? I gather that you had personnel files, but you were not in the aspect of law enforcement other than personnel information. Is that right? Or what did you actually do?

Mr. LIVINGSTONE. Senator, as I understand it, there are three or four parts to your question. The office is an adjunct of the counsel's office, counsel to the President. By way of explanation, the counsel's office reviews background investigations and tax-check waivers for suitability to the access—of personnel for access to the White House complex. They would review these materials and, if necessary, make notes: Apparently this person didn't file a 1993, please find out why.

We would then contact the individual and say the IRS has stated that you did not file, and they would invariably go, oh, yeah, I was moving, I got an extension, I got the form here somewhere. And in a week or two, they would come down, and they would have the form. We would give them an address at the IRS to write to, to send a letter to us saying that they had accepted their request for an extension, and we would tell counsel that.

If it was an issue on a BI—it was usually something fairly innocuous—outstanding parking tickets, something like that that needed to be resolved, again, we would talk to—we would contact the individual that counsel wanted these issues straightened out, and we would get verification that they had paid their parking tickets or paid their Sears bill off or whatever the issue was.

We, sir, were largely administrative. We were not a security office in the sense of law enforcement. And that was never my understanding.

Senator HEFLIN. Well, that is the point I want to direct to. What law enforcement experience and law enforcement training would be of help and assistance to you in carrying out the duties of that office?

Mr. LIVINGSTONE. I would like to answer your question and, perhaps by way of explanation, answer Mr. Simpson's question, too. I think that largely I got that job because I was a little older, the Secret Service—I was a known entity to the Secret Service from the Inaugural Committee, and they said that I did good work at the Inaugural Committee. The director sent a letter saying I did fine work and without my special assistance to their concerns, the event wouldn't have been such a success.

I presented those credentials for my employment, and that is the extent of my law enforcement experience.

Senator HEFLIN. I am not asking you your law enforcement, but what benefit would it have done to your duties in this office, your work, if you had had law enforcement experience or training?

Mr. LIVINGSTONE. I would think that if I had law enforcement training, I would have been more familiar with correct and proper procedures, and certain mistakes might not have been made.

The CHAIRMAN. Thank you, Senator Heflin.

Senator Specter.

Senator SPECTER. Thank you, Mr. Chairman.

I would like to utilize my 7 minutes to discuss a matter of importance, and I think time-sensitive, that our committee ought to move very promptly to seek to grant immunity to Mr. Anthony Marceca after he has entered the plea of privilege against self-incrimination this morning. This is something I discussed about an hour-and-a-half ago with the chairman, and I have since done a little extra research about it.

In my legal judgment, Mr. Marceca has waived his privilege against self-incrimination and could be compelled to testify because he has testified in House proceedings and he has given an interview to this committee. There is authority in the District of Columbia circuit under somewhat analogous circumstances. When someone testifies before a grand jury without invoking the privilege, he may not then invoke it at trial.

But it is possible for defense counsel to raise a number of contentions to delay that kind of a conclusion on the ground that there is some authority in other circuits to the contrary, although not controlling authority for this circuit, and also there could be conceivably an argument of change in circumstances with the appointment of the special counsel where a witness might make a claim of being the target—not that that is the case here, but there is some authority on a contention of change of circumstances.

I believe that the essential question or an essential question in what we are looking at here is who is responsible for the disclosures of these FBI files. And I said in our hearing last week that I thought we ought not to rush to judgment and we ought to find the facts, and the most important fact-finding that we could undertake is to get testimony from every witness in the chain to make a determination as to who said what to that witness, what a supervisor may have said, what that supervisor's supervisor may have said, and to move up the chain to see how far it goes, not drawing any conclusions in advance and not rushing to judgment but saying who is ultimately responsible for these very serious invasions of privacy and these very serious disclosures.

This is a common tactic in investigative matters or in prosecution matters. When I was district attorney, my first assistant handled a famous prosecution that led to Tony Boyle, the president of the United Mine Workers, with a series of convictions on the murder of Jock Yablonsky, his wife, and daughter many years ago in Washington County, PA. And I believe that is what we ought to be doing here. And I believe that time is of the essence because there are a fair number of legal proceedings that have to be undertaken under a grant of immunity.

The statute requires that there be a two-thirds concurrence of this committee, so it would have to be bipartisan to make the request. Ten days' notice has to be given to the Attorney General or, perhaps in this case, independent counsel. Then it goes to the district court, and it is a ministerial matter, and I have consulted with Senate Legal Counsel Thomas Griffith to get the precise procedures that apply to the Senate, because they are somewhat different from the work I used to do as a district attorney. And if the witness then comes before the committee and refuses to testify, then there are a couple of avenues, criminal contempt or civil contempt—I think what we would be likely looking at would be civil contempt, and

then it would have to go to the full Senate and back to a court for enforcement.

Now, this doesn't necessarily take a long time, but it could, and there could be appeals, even though meritless. There could be an appeal to the circuit. There could be a petition for cert, all of which underscores the importance of moving with dispatch. And while there are a lot of aspects of this matter which are important, I repeat that I think the most critical factor, without rushing to judgment, no preconceived conclusions, is to find out who the ultimate authority was in ordering this horrendous invasion of privacy. So that even though I think we could compel the testimony of Mr. Marceca on this state of the record, there are enough delaying tactics, and then the question would arise as to what Mr. Marceca testifies about and what that person might do.

And we are all aware of the timetable, and the sooner this committee would complete its work, the better off everyone would be.

Senator SPECTER. If we complete our work in July, so much the better to remove it as far as possible from the November election.

So, Mr. Chairman, my formal request is that the committee consider at this point a formal grant of immunity to Mr. Marceca.

The CHAIRMAN. We will certainly consider that. We will certainly consider that.

Senator SPECTER. Would the Chair entertain that motion? Should I move for an executive session?

The CHAIRMAN. Not at this time. I would like the Senator to withhold for a while. That is certainly something we will have to consider.

Senator SPECTER. Mr. Chairman, if I might make just one addendum, the immunity statute requires a two-thirds vote of the full committee—

The CHAIRMAN. Right.

Senator SPECTER [continuing]. And this is Friday, and although we are heavily engaged in the Department of Defense authorization bill, it is entirely likely that we will not have all our members present.

The CHAIRMAN. It is not only that, but I think we are going to have to consult with special counsel and others before we entertain that motion.

Senator SPECTER. Mr. Chairman, let me just respond to that. The independent counsel is covered under the statute.

The CHAIRMAN. I understand.

Senator SPECTER. He has 10 days to respond, and if we do not act on this today, we will lose 11 days at the earliest and probably 2 weeks.

The CHAIRMAN. Let us give some consideration to it. We will.

Senator Simon.

Senator SIMON. First, let me just say I think the Chairman's decision is the proper one that we should consult with the independent counsel before we move as Senator Specter has suggested. I may very well support the motion eventually, but I think we should consult with the independent counsel first.

I am reminded here, and I think it was Lloyd Bentsen who gave me some excellent advice before I was elected to the Senate. He said when you put your Senate staff together, don't keep the people

who are in your campaign necessarily. The person who does a good job in a campaign may not be the right person in your Senate office, and I think that is true for the White House and for every other office.

The question is this, a misuse of files that has taken place. Was this bungling or was this malicious? That is the fundamental question. Right now the testimony of the two witnesses appears to be that there was bungling on the part of the FBI, Secret Service, and the White House staff, but the fundamental question still remains. Was there anything done?

Now, Mr. Livingstone, in your testimony, you say I never myself sought to obtain any FBI background information on any person for any improper purpose whatsoever. You say I never myself. Did anyone else that you know of in the White House obtain any information, FBI information, for improper use?

Mr. LIVINGSTONE. I have no knowledge of that, sir.

Senator SIMON. Ms. Wetzl, are you aware of any?

Ms. WETZL. No, sir.

Senator SIMON. Mr. Livingstone, today's Wall Street Journal has an article by Phil Kuntz and Glenn Simpson. Let me just read two paragraphs from that story.

Anthony Marceca said he tried to get a hold of his Federal Bureau of Investigation file while he was seeking a political appointment in the Clinton administration. After learning from former White House personnel security chief Craig Livingstone that there were problems in his FBI background report, Mr. Marceca sneaked a look at the file during a visit to Mr. Livingstone's office in September 1994, months after he left his White House post.

Mr. Marceca said he asked to see his file and Mr. Livingstone refused to give it to him. Nevertheless, Mr. Marceca said he managed to see it on September 11, 1994, when he visited Mr. Livingstone in the White House. When Mr. Livingstone received a phone call, Mr. Marceca said he picked up a newspaper and some background investigation files fell on the floor.

Are you aware of this beyond this story? Is this story accurate?

Mr. LIVINGSTONE. I believe I was first aware of it this morning when I discussed it with my attorney as he read it to me from the paper on my way here.

Senator SIMON. And you have no knowledge of this whatsoever?

Mr. LIVINGSTONE. Well, sir, I want to—I want to be as helpful as I can, but at the same time as precise as I can.

As was my job, I would review derogatory information with individuals who are seeking suitability and access to the White House.

I recall discussing with Mr. Marceca about some issues in his background which, of course, I can't discuss here today, but by way of explanation, the issues, derogatory issues—

Senator SIMON. Did you disclose to him anything in those FBI files?

Mr. LIVINGSTONE. As I said, in the normal procedure of my job, if you had a problem, and I am just speaking hypothetically here, with a Sears bill in Montana and the FBI did a credit check on you and said that Sears has been trying to contact you for 2 years, I would certainly make you aware of the fact that Sears says they are trying to get a hold of you for the last 2 years.

There are circumstances in which I wouldn't do that, and they are spelled out by the FBI in that the individual's protected source do not reveal the identity, do not reveal the source of this informa-

tion. There are guidelines which are in the BI's, which I am sure you all see much of.

Senator SIMON. When he said when Mr. Livingstone received a phone call, Mr. Marceca said he picked up a newspaper, I don't know if he means you or Mr. Marceca. Evidently, he means himself, Mr. Marceca, and it said he picked up a newspaper and some background investigation files fell on the floor. One of them is his.

Does that seem possible?

Mr. LIVINGSTONE. I have no—no recollection of that event. To answer your question, it doesn't seem possible to me.

Senator SIMON. And he was visiting you after he was employed, and you had his file at that point? You would have had to have requested his file or gone to someplace and picked it out.

Mr. LIVINGSTONE. I don't recall meeting with Mr. Marceca as he describes it. I do recall meeting with Mr. Marceca to talk about issues in this background, which ultimately Mr. Kennedy decided were unresolved and that he should not continue his detail.

Senator SIMON. But when you said you recall meeting with Mr. Marceca, do you recall meeting with Mr. Marceca after he left the White House?

Mr. LIVINGSTONE. Oh, sure.

Senator SIMON. OK.

Mr. LIVINGSTONE. But let me explain that. He came over to the White House. He worked on a thing called the comments line, which is people call in to the operators and, you know, tell what they want to say about the President, good and bad.

Senator SIMON. My time is just about up. Final question.

Mr. LIVINGSTONE. Yes, sir.

Senator SIMON. Did interns have access to the FBI files, and did anyone make any copies of any information in the FBI files?

Mr. LIVINGSTONE. No, sir. As a matter of practice, we requested additional copies from the FBI. When we sent the request form to the FBI, we would ask for copies to be sent, and when we wanted to forward a copy to the Secret Service, we would use one of those copies. So it would not be our practice to copy FBI files.

I believe you asked me about interns. I have heard much discussion about this, and while I know I can't make an adult comment that would allay people's fears, we did discuss with the interns that worked in our office—we did ask them to attend a security briefing that staff attended on the proper handling of sensitive materials. At no time did interns in my office have—come into contact with classified materials.

I do not—I am not aware that FBI information is treated as a classified document. I have seen FBI material, at different points, have a secret file attached to it or a top secret file.

Senator SIMON. When you say you are not aware the FBI files are classified material, your answer to that is, then, interns did have access to these FBI files.

Mr. LIVINGSTONE. So it would be—it would be—it would be an untruth for me to suggest that interns who had readily access to the files could not also have access to what is in them, and I believe in my heart that was not a practice that happened.

Ms. WETZL. I might add they were also under constant supervision. Interns were not allowed in the office when staff members

weren't present, and in fact, the vault was locked and alarmed when a staff member left the office.

Senator SIMON. My time is up, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Simon.

Senator Thompson.

Senator THOMPSON. Yes.

Mr. Livingstone, I think you are quite right when you point out that political activity is not a bad thing. In fact, we often encourage it.

I think you also understand, though, that when you have been that heavily involved in politics and several hundred unauthorized files show up in your office from your political opponents that certain questions are raised. Do you understand that?

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. Getting back to your employment, the office of White House Security, of course, was a part of and directed by the office of the Counsel to the President. Is that correct?

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. From what you have said, apparently the contact you had with the office of the counsel to the President was Mr. Kennedy.

Mr. LIVINGSTONE. At that time, sir, it was Mr. Kennedy.

Senator THOMPSON. And he was the one who, more or less, officially hired you, or you felt like you were hired when you left his office?

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. All right. Leading up to that, getting to what information he had or how you got there and who would want you there, you have told us very candidly of your background. You said you worked in bars and restaurants in Washington over a period of time. The Hart campaign, you did advance work, Senator Wirth, various other campaigns, advertising agency for a while, certain projects like Farm Aid, various advance and logistics kinds of jobs throughout that period and then the Inaugural Committee. I am sure I am not touching everything, but that is a fair summary of your background. Is that correct?

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. Then you went to work for the Inaugural Committee, and you got a recommendation apparently from a Christine Varney who evidently interceded on your behalf with someone and put in a good word for you for the job that you wound up getting. Is that correct?

Mr. LIVINGSTONE. I believe that is correct, sir.

Senator THOMPSON. OK. Then, next, you talked to Mr. Kennedy. Is that correct?

Mr. LIVINGSTONE. Actually, I talked to Ms. Mills, Cheryl Mills. Senator THOMPSON. What was her position?

Mr. LIVINGSTONE. She was a—she is an associate counsel at the White House, sir.

Senator THOMPSON. Associate counsel under Mr. Kennedy?

Mr. LIVINGSTONE. No, sir. She—I guess Mr. Kennedy and Ms. Mills would be equal at that time.

Senator THOMPSON. She was part of the office of the Counsel to the President.

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. Did you have more than one conversation with her?

Mr. LIVINGSTONE. No, sir.

Senator THOMPSON. About how long was that conversation?

Mr. LIVINGSTONE. Sir, I believe as I testified, it was a fairly brief conversation just to talk about an overview of the job.

Senator THOMPSON. You already had the job, you think, by the time you were talking to her then?

Mr. LIVINGSTONE. No, sir. I think I testified that she was the first person I really talked to about the job.

Senator THOMPSON. All right. Then how long after that did you talk to Mr. Kennedy?

Mr. LIVINGSTONE. It is difficult for me to be precise, but I think relatively soon.

Senator THOMPSON. How long was that conversation?

Mr. LIVINGSTONE. I don't recall the exact length, but it—

Senator THOMPSON. Was it in detail? Had you known Mr. Kennedy before this?

Mr. LIVINGSTONE. No, sir.

Senator THOMPSON. But you were, in fact, going to work for him, wound up going to work for him.

Mr. LIVINGSTONE. Yes, sir.

Senator THOMPSON. All right. So what did you talk about?

Mr. LIVINGSTONE. As I recall it, sir, I was in that office for a few days, and all the career people or the former—to describe it correctly—the former people from the previous administration were still there, four individuals to be specific, and it was a little difficult in that I hadn't been assigned to the position yet. However, they were aware that I was being considered for the position.

Senator THOMPSON. And it was a hectic time, I am sure, people running in and out and all over the place.

Mr. LIVINGSTONE. Right, and I tried to be as polite to them knowing that they were going to be leaving.

Senator THOMPSON. So about how long did you talk to Mr. Kennedy?

Mr. LIVINGSTONE. I believe the first conversation we had was fairly short.

Senator THOMPSON. So you had more than one conversation?

Mr. LIVINGSTONE. Oh, I am sure we had many conversations.

Senator THOMPSON. Before you got the job?

Mr. LIVINGSTONE. Before I got the job, sir? I don't recall specifically. A few. A few.

Senator THOMPSON. You had a few conversations with Mr. Kennedy before you got the job?

Mr. LIVINGSTONE. Before Mr. Kennedy said go downstairs and start working.

Senator THOMPSON. All right. What did you talk about? What did you discuss during those conversations?

Mr. LIVINGSTONE. Generally, what I knew about the position, what he knew about the position, what he understood my role would be.

Senator THOMPSON. You felt that when you first met with Mr. Kennedy that you were in pretty good shape as far as this job was concerned?

Mr. LIVINGSTONE. No. I think Mr. Kennedy made it pretty clear to me that—that we were sort of on our probationary period.

Senator THOMPSON. Did you feel that you had to convince him that you had to interview with him for the job and that he was going to make a decision that he had not made yet? Is that the feeling you had?

Mr. LIVINGSTONE. I wouldn't convey it that way, sir.

Senator THOMPSON. All right. The other side of the coin would be, then, that you went in, and talking to him, and that yours was, more or less, the job to lose at that point. Is that a fair characterization?

Mr. LIVINGSTONE. I think I didn't know if I had the job or not when I talked to Mr. Kennedy.

Senator THOMPSON. Well, what do you think now looking back on it? Do you think that you were having to convince Mr. Kennedy to hire you or interview for the job on the hand, or on the other hand do you think that Mr. Kennedy was planning on hiring you unless there was some reason not to?

Mr. LIVINGSTONE. I don't have a specific recollection of it.

Senator THOMPSON. Isn't it pretty apparent when you consider all the circumstances leading up to your conversation with Mr. Kennedy that somebody had put in a good word for you with Mr. Kennedy?

Mr. LIVINGSTONE. I believe that would be a fair statement, sir.

Senator THOMPSON. All right. Who do you think that was?

Mr. LIVINGSTONE. I don't know.

Senator THOMPSON. Did Mr. Kennedy not say that someone had put in a good word for you?

Mr. LIVINGSTONE. I have a vague recollection of Mr. Kennedy saying that he had asked a couple of people about me.

Senator THOMPSON. Who?

Mr. LIVINGSTONE. He didn't say. He just said I had asked a couple of people about you and—

Senator THOMPSON. All right. Ms. Wetzl—

Ms. WETZL. Yes, sir.

Senator THOMPSON [continuing]. It looks like you and I have run out of time, but I will ask you this, and maybe we can come back to a second round. Apparently, as soon as Mr. Marceca left—well, not as soon as, but late fall of 1994, you went in, took one look at the files, and you could see in his drawer that there were a whole lot of files there, many more than you expected to see. Right?

Ms. WETZL. Yes.

Senator THOMPSON. Then when you took a quick look at it, you saw a name immediately that you knew shouldn't have been there.

Ms. WETZL. In the process of looking at those files, I noticed, yes.

Senator THOMPSON. OK. So it took you about how long in order to determine that something wasn't right as far as those files that Mr. Marceca had there?

Ms. WETZL. As I said, in looking at them immediately without even reading the labels, I saw how many there were. That struck me that there were more than we needed.

Senator THOMPSON. You knew that something wasn't right, and I believe you had been out of college for, what, less than a year at that time or about a year?

Ms. WETZL. Well, let us see. I graduated from college in May of 1993. At that point, it was—

Senator THOMPSON. Fall of 1994.

Ms. WETZL [continuing]. Very late 1994, early 1995.

Senator THOMPSON. All right.

The CHAIRMAN. Senator, your time is up.

Ms. WETZL. Can I say something about this list that I have looked at now?

The CHAIRMAN. Sure.

Ms. WETZL. This list Senator Grassley gave me, it is the Secret Service list. It is a Xeroxed copy of a Secret Service list, and the very first name on there is incorrect. It says Joseph Whitehouse Agin, A-g-i-n, and on this list that I typed up of files that we didn't need, it says Joseph Whitehouse Agin, A-g-i-n. So it would show that Tony used a Secret Service list. Well, that was misspelled in ordering that file.

Senator BIDEN. It also shows, if I may, Mr. Chairman, that the Secret Service list was inaccurate?

Ms. WETZL. Yes, it does, and it also has no indication of active or inactive passholders on it that I can see.

The CHAIRMAN. All right. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Mr. Livingstone, in a sense, my heart goes out to you because clearly you admit that you don't have law enforcement background. Obviously, you wanted to work in the White House. You were offered a job by whomever, and you took that job. Clearly it is not your fault nor is it a crime not to have law enforcement experience.

I would really like to understand once you got there, did you have security briefings? Were you actually taught how to handle the files by anyone, and if so, by whom?

Mr. LIVINGSTONE. Yes, ma'am. We—in the Executive Office of the President, there is a career security officer named Charles Easley who I believe you know is now overseeing all personnel security, and he is a very capable individual, a personable individual, and he conducted security briefings for all of our staff, to be sure of our political staff, which was a requirement for getting your permanent pass at the White House.

I met with him. I met with members of the Secret Service to talk about how I could better learn my job. I mean, I am here to say today, as I did to the Members of the House, that a lot of this was on-the-job training for me, but it is important to note for both you, the Senators, and the American people, most of the work that I did was administrative. Lawyers in counsel's office saw the materials prior to me ever getting them.

Senator FEINSTEIN. Define administrative.

Mr. LIVINGSTONE. Well, they would review the files, as I have said, and I won't go into a long explanation, but they would review the files, and if there were errors, someone said they graduated from the University of Pennsylvania and it came back and said they were 12 credits short of graduating, we would call them and they would say, well, actually they finished, but they didn't pay an

outstanding library fine and we are not going to release their academic transcripts, fairly innocuous things that could be solved.

If there were more egregious, and I won't speak in the hypothetical terms, but outstanding tax issues, for example, counsel very often would deal with the issue themselves.

I never undertook an investigation. I was never there to be the final arbiter of who could and who could not be at the White House. The counsel in this particular case, Mr. William Kennedy, made that decision.

Senator FEINSTEIN. So, if I understand you, what you did was under the direction of someone else. You would carry out certain investigative duties like calling Sears, for example, and saying did you, in fact, try to reach this individual about an overdue bill, that kind of thing.

Mr. LIVINGSTONE. Well, actually we would contact the individual.

Senator FEINSTEIN. You would contact the individual?

Mr. LIVINGSTONE. And we would ask them to contact Sears because, as I understood it, most corporations won't release that kind of information to a third party.

Senator FEINSTEIN. OK. Let me ask this question. Senator Leahy asked you about whether anybody asked you for information. Did you ever on any occasion share the information that you had in a file with anyone either inside or outside of the White House?

Mr. LIVINGSTONE. No, ma'am. The only people that I would talk to were the individuals—you know, I would talk directly to individuals about matters in their files, as was pursuant to my job.

Senator FEINSTEIN. Then what would you do with that information when you got it?

Mr. LIVINGSTONE. Very often we would have a memo prepared for counsel saying, you know, so and so paid their taxes, so and so got their license changed, whatever the issue was, and they would write a statement at the bottom saying OK or no, I want another attachment, and then we would proceed either sending for the pass or asking the individual to produce more information.

Senator FEINSTEIN. Were interns actually in possession of a file and able themselves to review or look at the contents of a file?

Mr. LIVINGSTONE. We did our very best to brief the interns, as does every office that I have ever worked on, both on the Hill or in campaigns or outside of the political world; that there are things that you can't do, you shouldn't see or you shouldn't do, and we did our best to do that, but to be sure, Mr. Simpson and Mr. Grassley's comments, that is not to say that the interns couldn't have just opened up a file and looked at it. I want to be clear on that, and I understand that that was a mistake, and I understand the White House has taken many steps to correct that.

Ms. Feinstein, I don't mean to use your time, but in 11 or 12 hours of testimony, there is one thing that I would like to make clear, and I hope that someone is taking the time to do it, and I just don't know.

If the FBI had the same safeguard that the IRS had to protect private citizens files, this would never have happened. In no way, sirs, am I suggesting that that excuses my lack of responsibility. All I am saying is that if the FBI had a waiver for the copy of the previous report, as does the IRS that requires the individual's sig-

nature and approval, our office never could have requested it, and again, that is not an explanation and I am not blaming it on the FBI. I am merely saying we are spending all this time on finding out if there is something wrong. This is something that could immediately be corrected, and if it has not been corrected, it should be done.

Senator FEINSTEIN. Thank you very much. I think that is an excellent point.

Ms. WETZL, how long did you actually work in the White House?

Ms. WETZL. I started in June 1993 as an intern and I progressed to staff assistant and executive assistant, and I left in September 1995.

Senator FEINSTEIN. So a couple of years?

Ms. WETZL. Yes.

Senator FEINSTEIN. Do you have anything else that you might like to tell the committee on these files? I mean, for some reason, there is the fact that there are active passes and inactive passes, as I understand it, very often on the same list.

Ms. WETZL. Yes.

Senator FEINSTEIN. That somebody's status might change and they were no longer active in terms of employed on the staff, but they would still have access to the White House. Is that correct?

Ms. WETZL. It is my understanding, if I am understanding what you just said, that from what Secret Service told me, when somebody left the White House, in other words, they were no longer employed, they weren't a detailee, they didn't need access anymore, they would delete them from one of their data bases, and in that sense, the person could not use their pass if they kept it, which they are supposed to return, but a lot of people keep them as souvenirs. If they kept it, they couldn't use it. They wouldn't be able to get in the building.

However, at the same time, they were—Secret Service told me that they were suppose to delete that person's name out of a second data base or system, and that very often that didn't happen. It was just human error, and that was the reason, also, they said, another reason for our inaccurate lists.

Senator FEINSTEIN. Thank you very much.

Senator GRASSLEY. Mr. Chairman, 15 seconds please to make a comment here.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. We have heard two questions that have indicated the possibility of a casual attitude of privacy as interns could possibly have seen FBI files. That ought to be contrasted with the fact that when a U.S. Senator for a confirmation proceeding or other reasons has a right to see an FBI file, we can't see an FBI file unless there is an FBI agent in the room with us.

The CHAIRMAN. Or staff in the room. We handle those very, very carefully.

Senator Brown, we will turn to you at this point.

Senator BROWN. Thank you.

Mr. Livingstone, if I understand your previous comments, you did not ever talk about the contents of those files with anyone?

Mr. LIVINGSTONE. No. I talked, as I said, I believe I testified today and previously in depositions that pursuant to my duties I

would talk to people. You know, supervisors, the individuals, other agencies would come and review people's files for clearances from other agencies all within the confines of my job and, of course, counsel's office.

Senator BROWN. Who, then, did you share the content of the files with?

Mr. LIVINGSTONE. I am not sure if I follow your question. I thought I just said it.

Senator BROWN. Who specifically, names, did you share the information included in the files with?

Mr. LIVINGSTONE. I would talk to Bill Kennedy, Chris Cerf, Beth Nolan, David Fein, Trey Schroeder, George Saunders, Arnold Cole. Those are the names that immediately come to mind, sir.

Senator BROWN. Were there any others that you talked to, you shared the information in the files with?

Mr. LIVINGSTONE. I believe that there were, but those are the names that come to mind.

Senator BROWN. Did you share the information in the files with anyone who Mr. Kennedy reported to?

Mr. LIVINGSTONE. I don't believe that I ever had a conversation with Mr. Foster about FBI files other than to pick up files and return them properly to the vault in our office if you were reviewing files from our office.

Senator BROWN. You never talked to the President about the content or information in the files or the chief of staff about the content or information in the files?

Mr. LIVINGSTONE. No, sir.

Senator BROWN. Did you ever make up reports summarizing the information in the files and pass them on to anyone?

Mr. LIVINGSTONE. Only within the confines of counsel's office.

Senator BROWN. And who would that have been that you had passed information on to about the files?

Mr. LIVINGSTONE. My immediate supervisor of which I had five, I believe.

Senator BROWN. Could you name those for us?

Mr. LIVINGSTONE. Yes, sir. Mr. Kennedy, Ms. Nolan, Mr. Cerf, Mr. Fein, and Mr. Schroeder.

Senator BROWN. Would you be aware if they passed your summaries of that information on to anyone?

Mr. LIVINGSTONE. No, sir. I would have no knowledge of that.

Senator BROWN. Did any of them ever advise you? Did any one of them ever advise you or were you informed that they had given those reports to anyone?

Mr. LIVINGSTONE. Well, I think it just needs to be made clear so people understand these are—these are people who have already reviewed the information, and I am merely providing it back to them in the format that they want, that is, as I said to Senator Feinstein, you know, this issue needs to be resolved.

Senator BROWN. No, I understand that.

Mr. LIVINGSTONE. OK.

Senator BROWN. My question was, did any of the people who you had sent summaries of information or information about the files to ever indicate to you they had passed it on to other?

Mr. LIVINGSTONE. I don't have any recollection of that.

Senator BIDEN. Senator, would you yield for a clarification to you, not to the witness?

Senator BROWN. Certainly, if it doesn't come out of my time.

Senator BIDEN. Are you asking whether he shared any of the inappropriately acquired files, or are you asking whether he shared any of the file information on new employees? Because I think there is a big distinction. I would like to know the answer if he shared any Bush administrative holdovers who were not holdovers, the 300-and-some or 400 people who were inappropriately—their files gathered.

Is the question did he share any information on any of the 400 identified inappropriately requested previous files? Did you share any information on those files with anybody? Is that what you are asking? If not, I would like to ask it when my turn comes.

Senator BROWN. I think it is coming out of someone else's time. So that is fine. I think that is an excellent differentiation.

Mr. LIVINGSTONE. If the question is as I have seen this list, do I have any knowledge of ever sharing any information from those files, absolutely not.

Senator BIDEN. With anyone?

Mr. LIVINGSTONE. Anyone.

Senator BIDEN. Kennedy, anybody in the office, anyone at all in the world?

Mr. LIVINGSTONE. To my knowledge—well, it has been pointed out to me there are a few names that are on there that are incorrectly. Anybody that wasn't at the White House appropriately, that is—

Senator BIDEN. James Baker.

Mr. LIVINGSTONE [continuing]. The political figures that had been mentioned repeatedly, I know that no one has ever asked for those files. I don't believe they ever knew they were there.

Senator BROWN. So you are telling me you never reported on information in those files to anyone?

Mr. LIVINGSTONE. No, sir. I was not aware that we had these files until last month or earlier this month.

Senator BROWN. In the process of things, did you ever copy the files and give those copies to people or copy anything in the files?

Mr. LIVINGSTONE. Are we speaking about these files?

Senator BROWN. In the FBI files, generally,

Mr. LIVINGSTONE. Right. No, I have no knowledge of that, and I don't know—I don't believe that anyone in my office would have done that.

Senator BIDEN. Mr. Chairman, on my time if you would have the staff note, I think, Mr. Livingstone, it is very important that you delineate when you answer these questions whether you are talking about files that were gathered appropriately or files that were gathered inappropriately.

Mr. LIVINGSTONE. All right.

Senator BIDEN. Make the distinction for us, please—

Mr. LIVINGSTONE. I appreciate the instruction.

Senator BIDEN [continuing]. So you don't confuse us more.

Senator BROWN. But in either case, whether there were files gathered appropriately or inappropriately, you never copied any of the information in them?

Mr. LIVINGSTONE. No, sir. There would be no reason to.

Senator BROWN. By copy, I mean not summarize them, but by Xeroxing them or making copies.

Mr. LIVINGSTONE. No. As I said, we would request for any backgrounds that requested from the FBI on new backgrounds for additional copies so that they could be sent to the Secret Service.

Senator BROWN. The summaries of information we have gotten indicate that the Clinton White House had been running about 500 files a month, just for normal clearances, at least in the category that we have used for, gathered properly, which is roughly double what the Bush White House had been requesting. Can you give us any guidance as to why your operation would require twice as many FBI files in their normal operation as the previous White House had?

Mr. LIVINGSTONE. Well, again, following Senator Biden's advice, let me try to be precise and answer your question. The FBI files do not mean the same thing. What we are talking about here are a copy of a previous report.

The large work that I did was requesting a new investigation. The summary reports, as the Senators have talked about, didn't include the 302's, which has the sensitive data, to my knowledge. They would include just a summary of the report itself. The reports that I would get on new employees would be more the larger report.

To answer your question, I think that a lot of what were requesting at that time period were name checks on volunteers because we had what I would consider a large number, more of volunteers, at the Clinton White House than at the Bush White House, and these were called name checks which were just a request that we would send to the FBI that would say do you have any information available on any of these people, do these people have a criminal record, and they would do a cursory check of their Justice files, the national crime investigative computer, et cetera, and they would send us our copy of our request either stamps no available information or something attached, that is, if they were a Government employee, they would have a summary of their previous report.

So I suspect that a lot of those reports, sir—

Senator BROWN. If there is a difference that relates to the number of volunteers.

Mr. LIVINGSTONE [continuing]. Were a lot of volunteer name checks for access.

Senator BROWN. Thank you.

Senator SIMON. Mr. Chairman, if I could have a 15-second question.

Did any volunteers work in your office?

Mr. LIVINGSTONE. Only volunteers that were known to me, and it was at the very beginning of the administration. As I recall, just the first couple months, some people that had worked with me on the inaugural helped us get paperwork out, that type of thing.

Senator SIMON. Did they have access to these FBI files?

Mr. LIVINGSTONE. Well, to be sure, our files hadn't even started to be processed yet at that time. We didn't have, as Mr. Biden had suggested—we didn't have the copies of the previous reports because we hadn't started that project yet. So we had very little in

the office at that time at all because all the files had left to the Bush archives. So we had recreated at that time, sir, our file system.

Senator THOMPSON. Mr. Chairman, on followup, 15 seconds if I may.

On followup to the answer about the name checks, you probably recall, Mr. Livingstone, that Mr. Shapiro of the FBI said that when the 481 files were requested in a series, they were all for previous reports. None of them was for name checks. Do you recall that?

Mr. LIVINGSTONE. Yes, sir, I do recall that.

Senator THOMPSON. Well, how does that square with what you just said?

Mr. LIVINGSTONE. Well, I believe what I had said, sir, is that Mr. Brown, Senator Brown, had asked me why we had 500 requests. I don't know what the time period was. A month, I think it was. And I was trying by way of explanation to talk about, as Mr. Biden suggested, the different types of paperwork that go to the FBI.

The copy—the request for the copy of previous report is necessary if, as we thought it was, based on reviewing the list, to find out what the person's previous investigation date was, so we could determine that this person within the last 5 years had investigation.

If they didn't, we would then contact them, sir, and say you need to come in, fill out your paperwork so you can be scheduled for a reinvestigation. That is why a copy of a previous report was asked on these individuals.

We believed them to be in good standing either for access to the White House or employees. We sent the request for the copy of the previous report to determine—one of the things to determine was if their BI date was within the last 5 years, and if not, we would—may contact them to have it updated.

The CHAIRMAN. Let me interrupt here. You folks have been sitting there for a long time, and I think what we will do is just take a 5-minute break.

Senator BIDEN. Mr. Chairman, before you take a break, there is a very important point in the chain here for us to all figure this out.

The CHAIRMAN. OK.

Senator BIDEN. The question that Senator Thompson has just asked has confused me. So I went back and asked my staff to go over the list.

The FBI was right as far as they testified. This is the list of all the requests that came for the FBI. I would be happy to share it with the Senator and all members of the committee.

We highlighted the names in these colors of orange, reddish-orange and yellow, of previous files requested. Every other name in here is for a name check. Did you hear what I just said? Every other name in here is for a name check.

So Mr. Shapiro was technically correct because he was answering the question of the 481 names, were any of them for name checks. The answer is no. They were previous files, but all the rest of these were for name checks.

The CHAIRMAN. OK. Let us take a 5-minute break.

Mr. LIVINGSTONE. Thank you.

Ms. WETZL. Thank you.

The CHAIRMAN. We are going to start promptly in 5 minutes, and Senator DeWine, you will be the next questioner.

[Recess.]

The CHAIRMAN. All right. Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Livingstone, you have been involved in a number of political campaigns, and I think it is evident that you brought some talent and expertise in certain areas to these campaigns. I have had nine campaigns myself, and the one thing that you never tolerate in a campaign is someone who is incompetent. You have got a short period of time for the campaign. You have got to get the job done. So it is obvious that you brought some talent and expertise and that these campaigns would have continued to hire you and get you on board time after time.

Maybe if you could just take a minute and describe for us what you think your talents are in that area, what you brought to these campaigns, and then, in particular, in regard to the Clinton campaign, what your involvement was, who you were working with, what your role there was, who your friends were.

Mr. LIVINGSTONE. To answer the first part of your question, in a general sense, I entered—may I start with national politics?

Senator DEWINE. Sure.

Mr. LIVINGSTONE. I entered national politics in 1983. I believe the first event I ever worked on, I handled bags for a trip of Democratic Presidential candidates.

Senator DEWINE. Excuse me, and I really apologize. What I really want is your—no, I don't want the chronology.

Mr. LIVINGSTONE. OK.

Senator DEWINE. What I really want is just kind of your description of what you bring to a campaign. I mean, because by the time we get to the Clinton campaign—you have done this for a number of years. You have done different things, and I understand that, but what do you bring to that campaign? If you have to relate some of your background, that is fine.

Mr. LIVINGSTONE. I think that I have skills over 10 or more years of working on campaign events, to be sure, which include basic logistical things. I have worked with State, local, national press.

I understand that if press don't get the proper care in feeding that very often you don't get the proper spin on your story.

I understand that if the candidate or the elected official doesn't have a clean white shirt for his 5:55 interview with Tom Brokaw that people will say that he looks stressed and the campaign is haggard.

I think I was and am very capable in general care and feeding of campaign people.

I think I had a general understanding of dos and don'ts in making sure that you ensure the best picture, the best image of your candidate.

Senator DEWINE. In regard to the Clinton campaign, who did you work with, and was that basically your role as you have already described it?

Mr. LIVINGSTONE. I worked as a volunteer early on in Washington locally when the Governor would travel to Washington from time to time.

I worked very briefly on the convention with members of the National Finance Council in an advanced capacity, and I worked on a few campaign events and election night and then the Inaugural.

Senator DEWINE. So you might do some advance work earlier on as a volunteer when then-Governor Clinton would come to Washington, DC?

Mr. LIVINGSTONE. Well, as you—I am sure you are aware, Senator, a lot of political worker as a volunteer.

Senator DEWINE. Sure, but I mean, that is what you would do at that point, advance work maybe for the Governor when he came to Washington, DC.

Mr. LIVINGSTONE. Yes, sir.

Senator DEWINE. Now, going towards the transition period after the election before the inauguration, you have testified that you worked on the Inaugural Committee. You also told us today that you did advance work for—I think it was a retreat, this cabinet meeting that was held at some point.

Mr. LIVINGSTONE. I think that is a fair characterization.

Senator DEWINE. Did you do anything else during that period of time? What else were you doing during that period of time?

Mr. LIVINGSTONE. Well, sir, that—

Senator DEWINE. A couple-months period of time.

Mr. LIVINGSTONE. No. Actually, as I recall, the Inaugural was in January 20th or 21st—

Senator DEWINE. Right.

Mr. LIVINGSTONE [continuing]. And I was hired in the second week of February.

Senator DEWINE. Excuse me. I am talking between November, after the campaign ended, and the inauguration when you were hired, the point in time whenever you were hired.

Mr. LIVINGSTONE. Oh, I worked on election night in Little Rock, and then I think, as I recollect, a week or two later, I was working on the Inaugural Committee.

I think, to be precise, I worked on one or two Washington, DC advance events with Mr. Gore. I think—I think that is right.

Senator DEWINE. Is that a volunteer job at that point? Are those paid? Were you on salary for anyplace?

Mr. LIVINGSTONE. At which point in time, sir?

Senator DEWINE. Between the election and the inaugural, if you remember.

Mr. LIVINGSTONE. Thank you. I live in Washington, and I don't know that I would need a hotel or anything like that. So I may have done it as a volunteer, but I don't know for sure.

Senator DEWINE. You just don't recall. OK.

I have got some other areas that I would like to talk to you about, but my time is almost up. Let me just ask you a followup question to a question that was asked by Senator Thompson.

You told him that you took files to Mr. Foster's office. I am talking just in general course of your job. You took files to Mr. Foster's office. Were there other offices that in the general course of your job you would take files to besides Mr. Foster's?

Mr. LIVINGSTONE. I don't think I testified earlier that I took or removed files from Mr. Foster's office. I believe what I had said—

Senator DEWINE. I didn't say remove. Your testimony, my understanding of your previous testimony, was that you took files. You said you took files to Mr. Foster's office.

Mr. LIVINGSTONE. We were in counsel's office. Counsel's office, the counsel to the President, Mr. Foster, had two offices shared by an anteroom. It would be very similar to what a Senator's personal office might be like, chief of staff, or somebody would be on the outside.

I don't recall ever going into their office to get files.

Senator DEWINE. But you took it to that complex, then? I am just trying to understand where you took the files.

Mr. LIVINGSTONE. Yes, sir. My office was located in the Executive Office Building, and counsel's office is located in the second wing on the West—excuse me. That is the second floor of the West Wing in the White House.

Senator DEWINE. That is what you meant when you took files to counsel's office.

Mr. LIVINGSTONE. If it was requested to review a file, that is what we would do.

Senator DEWINE. Any other offices that you took files to that you recall besides what you just testified to?

Mr. LIVINGSTONE. Counsel's office. There are other counsel's office in the Executive Office Building.

Senator DEWINE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator DeWine.

Senator Abraham.

Senator ABRAHAM. Ms. Wetzl, let me start with sort of a followup to where Senator Thompson and you were at when his time ran out.

Basically, the list that you believe Mr. Marceca used that you saw when you were an intern, do you have any idea what happened to that list? Do you think it is still in existence?

Ms. WETZL. Well, I wasn't an intern when Tony was working on this project, and no, I don't know what happened to the list.

Senator ABRAHAM. The list that Ms. Gemmell had that you saw, I guess when you were in wherever the files were that she and Mr. Marceca had collected, do you know what happened to that list?

Ms. WETZL. Yes. That list, I recall. I disposed of it in a burn bag.

Senator ABRAHAM. OK. So we don't know what—we can't—

Ms. WETZL. Well, right, because that is my word. Right.

Senator ABRAHAM. You have testified and you have indicated here today that you looked at what Mr. Marceca's work product was and knew almost immediately that he had collected more files than was appropriate or necessary for the job of the update project. Is that correct?

Ms. WETZL. Well, almost immediately, I realized something was wrong, and then in the process of trying to figure it out—

Senator ABRAHAM. That was because there were so many files?

Ms. WETZL. Right. And then in the process of figuring it out, I realized that he had ordered too many.

Senator ABRAHAM. When you began looking through, you discovered that some of the people there were people for whom files had been obtained that were unnecessarily obtained. Is that correct?

Ms. WETZL. That is correct.

Senator ABRAHAM. Your testimony, I think indicated—I think somebody else here today had said Marlin Fitzwater's name sort of was one that triggered in your mind, the realization that the files that had been sought were either unnecessary or inappropriate. Is that correct?

Ms. WETZL. Yes.

Senator ABRAHAM. Was it your reaction at that point that—let me just move this to you. If you had been working off a list and saw Marlin Fitzwater's name, would you have sought an FBI summary on him for this purpose of the project update?

Ms. WETZL. Me personally?

Senator ABRAHAM. Yes.

Ms. WETZL. I had a lot of other responsibilities in the office, and I had a general understanding of who was on access and who wasn't from those projects.

Based on that knowledge, I was fairly certain that Marlin Fitzwater had no need or did not have regular access to the White House complex. Therefore, if I had been working off a list on the update project and saw his name, then yes, that would have been a red flag to me.

Senator ABRAHAM. A bell would have gone off.

Ms. WETZL. Right.

Senator ABRAHAM. You would have inquired further perhaps.

Ms. WETZL. Right.

Senator ABRAHAM. Do you want to elaborate?

Ms. WETZL. He was just saying that maybe I should say what I actually did do when I started the project.

Senator ABRAHAM. I am just curious to when you saw the name Marlin Fitzwater. If you had seen that, you would not have sent over to the FBI the name Fitzwater to get his FBI summary.

Ms. WETZL. I wouldn't have unless I had determined that, yes, he did have regular access to the White House contracts.

Senator ABRAHAM. So you would have done an inquiry before you did that, is that correct, in some way?

Ms. WETZL. As I said, based on my experience on other projects, I had a fairly good understanding of who was on access and who wasn't, and because of that, I felt fairly certain that he wasn't on access, and therefore, I wouldn't have required it.

Senator ABRAHAM. You knew that obtaining FBI summaries was a fairly sensitive thing, though. Is that correct?

Ms. WETZL. Obtaining these previous reports was a fairly sensitive thing? I think in the nature of the office—

Senator ABRAHAM. But that the reports were sensitive?

Ms. WETZL. Yes. Yes, they were treated as sensitive.

Senator ABRAHAM. So you wouldn't have gone on and obtained the reports if you had had reason to think it may not have been appropriate, correct?

Ms. WETZL. No. I would not have obtained the reports knowing that that person did not require access to the White House complex.

Senator ABRAHAM. Or thinking that it might have been inappropriate.

Ms. WETZL. I am sorry?

Senator ABRAHAM. Or thinking that it might have been inappropriate, I mean, you would have probably done something to inquire further before you actually sent for the report?

Ms. WETZL. As I said, I had a fairly certain idea that Marlin—good idea that Marlin Fitzwater wasn't on regular access to the White House. There are other previous administration—

Senator ABRAHAM. I am speaking generally, but my point is—

Ms. WETZL [continuing]. Employees who have regular access.

Senator ABRAHAM. My point is this. I am really just saying that I think you have demonstrated in your testimony that you had an appreciation of the fact that these FBI summaries were sensitive material and that had you recognized names that seemed like they might be on a list that shouldn't be sought in terms of the summaries, you would have proceeded to find out a little bit more before you sent for them.

Ms. WETZL. Well, that is what I did do after—

Senator ABRAHAM. Right.

Ms. WETZL [continuing]. When I started the projects knowing that the Secret Service list was inaccurate and went through.

Senator ABRAHAM. Once you saw Fitzwater's name and maybe others that were there that were perhaps summaries that shouldn't have been obtained, who did you notify?

Ms. WETZL. I believe I mentioned to Craig—I know that I mentioned to Craig, Tony ordered all of these files that we didn't need, something like that, and I don't recall if I said specifically Marlin Fitzwater or a specific name.

Senator ABRAHAM. I am not trying to single out a name. I am just saying you notified Mr. Livingstone that perhaps there were files there or summaries there that should not have been.

Ms. WETZL. Right, and that is what I recall. However, his reaction was not very memorable. I don't believe that he had a very strong reaction, and I didn't receive any further instructions from that.

Senator ABRAHAM. All right. Mr. Livingstone, we have talked about who you may or may not have been hired by, but you reported basically to the people in the counsel's office. Is that correct?

Ms. WETZL. Yes, sir.

Senator ABRAHAM. OK. There has been some discussion, and my time is almost up here, of what you did when you were informed by Ms. Wetzl as to the possibility that files existed that should not have been there.

Who did you inform of that?

Mr. LIVINGSTONE. As I understood it, sir, they were files from people that had since departed. I never at any time thought that the individuals that had—that are on this list were the subjects that she was discussing.

The only instruction I ever had, sir, and this was very important, from Ms. Gemmell or anyone else prior to the administration was that when we got FBI reports, that our sole responsibility was to safeguard them and then to ensure that they were sent to the ar-

chives. No one has ever told me that we were supposed to send back reports that we didn't have.

Senator ABRAHAM. But you didn't tell anybody we have got a lot of FBI summaries here that we shouldn't have. You never indicated that to anybody above you?

Mr. LIVINGSTONE. Well, to be precise, sir, as my understanding was, it is that these were people that had left during the transition from the Bush to the Clinton administration. I never at any time thought that we had 300, 400 files of individuals that had never been part of the administration.

Senator ABRAHAM. But you didn't inquire further to determine that at that time. Is that correct?

Mr. LIVINGSTONE. I had no reason to believe that that were the case, but—

Senator ABRAHAM. But you didn't inquire further at that time?

Mr. LIVINGSTONE [continuing]. To answer your question, sir, no, I did not.

Senator ABRAHAM. OK. Mr. Chairman, I just have one more.

Once this was reported, I mean, a few weeks ago, when it became clear that obviously there were some files that were in this category we are discussing, did you talk to the FBI, the Secret Service, or anybody about how this could have happened?

Mr. LIVINGSTONE. I remember talking to a lot of people because I was mortified once it became apparent what we had, and I informed counsel. As I recall it specifically, I informed my counsel, and my counsel informed White House counsel later that night, separate from me. The FBI came in immediately and removed the files.

Senator ABRAHAM. You had talked to the FBI then and the Secret Service about it?

Mr. LIVINGSTONE. No.

Senator ABRAHAM. You never did at that point?

Mr. LIVINGSTONE. No.

Senator ABRAHAM. OK.

The CHAIRMAN. Senator Kyl.

Senator KYL. Thank you, Mr. Chairman.

Ms. WETZL, I would like to ask you a couple of questions if I might.

Ms. WETZL. Sure.

Senator KYL. In the spring of 1994, press reports indicated that the White House had experienced difficulties in getting its own staff cleared. There were more than 100 permanent employees at this time who had filed to file the necessary paperwork even to begin their FBI investigations.

For example, it was reported that William Kennedy, the associate White House counsel who was the direct supervisor of Mr. Livingstone had not gotten a clearance and a permanent pass until December, and this was after being in the White House in his case for a year.

Were you generally aware of these critical press reports at that time?

Ms. WETZL. Was I aware of critical press reports?

Senator KYL. Yes.

Ms. WETZL. Yes.

Senator KYL. According to your testimony before the House committee, you began to work on the project update in the late fall of 1994. Is that correct?

Ms. WETZL. Yes.

Senator KYL. This was also around the same time that you were promoted to be Mr. Livingstone's executive assistant, I believe.

Ms. WETZL. Yes. Actually, I am sorry. Could you say again the date of those critical press reports that you are speaking of?

Senator KYL. In the spring of 1994.

Ms. WETZL. Spring of 1994. OK.

Senator KYL. Yes. And then you began to work on this project in the late fall of 1994.

Ms. WETZL. Right.

Senator KYL. So you were aware of this issue at the time that you took your position with Mr. Livingstone.

Ms. WETZL. Yes.

Senator KYL. Now, you told the committee staff yesterday that you decided to box up the files that had been obtained in connection with project update in early 1995 and to send them to the White House office of Records Management. Is that correct?

Ms. WETZL. I am not sure about the date, but yes, I did decide to send them to Records Management.

Senator KYL. Well, would early 1995 be close enough?

Ms. WETZL. Yes.

Senator KYL. OK. According to an inventory list provided by the FBI, two of these archived files were charged out from Records Management on February 1, 1995, to you. So I presume it is safe to assume that you had boxed and archived these files sometime in January 1995, if not even earlier. Would that be a fair assumption?

Ms. WETZL. I am not sure what he question is. Are you trying to figure out the date that I archived them?

Senator KYL. Yes. I am just trying to get it as close as we can. I mean, clearly, it would be in January 1995 or earlier, if they were charged out to you on February 1.

Ms. WETZL. Well, I don't specifically have a recollection of charging it out in February, but I will take your word for it that if there is some record of it, of me charging it out on that date, that I did.

Senator KYL. The information that I have is that the inventory list provided by the FBI contains that information that they were charged out. Now, these are two of the archive files were charged out to you on February 1.

Maybe you could just tell us generally how long it would take you to process that, that kind of effort.

Ms. WETZL. I am sorry. You just said the FBI report said that?

Senator KYL. According to the inventory list provided by the FBI.

Ms. WETZL. Oh, the list that I typed. Is that correct? That would be provided by Records Management, not the FBI.

Senator KYL. Well, according to the inventory list that the FBI compiled relating to these documents.

Ms. WETZL. Can I have a copy of it? I am sorry. I am just confused about what inventory list we are talking about here.

Senator KYL. While you are looking at that, can you give us some idea of how long it takes to box it up and send it out?

Ms. WETZL. Sure. Well, it took me a while to go through those files and figure out which ones I needed and which ones I didn't. Once to my satisfaction I had pulled all the files I needed out of that batch—and I thought that the rest were just inactive—I mean, it just takes a day to box them up and type up a list and send to Records Management.

However, after I did that, names, you know, would pop up here and there, and I would realize, oh, I boxed a file that I do need. And so I would go back to Records Management and request that file, and they would give it to me and I would put it in the active working files.

Senator KYL. OK. Why don't you go ahead and take a look at that list?

Ms. WETZL. I don't recognize the document. I recognize the name of the file. "Charged out to Lisa Wetzl," it says.

Senator KYL. OK.

Ms. WETZL. I don't know who put together this document, but—

Senator KYL. And in any event, the time frame would be roughly as you recall, anyway.

Ms. WETZL. I believe so, yes.

Senator KYL. OK. Now, at this time—and we are talking about early 1995—the General Accounting Office was conducting an audit into the Personnel Security Office, and in particular, its failures in processing security background checks quickly enough. The GAO auditors first met with the White House staff, including Mr. Livingstone, Mr. Charles Easley, and Ms. Mary Beck, all of whom are testifying today, on October 27, 1994. And it was around this time that you restarted and reviewed the project update. Are you aware of all of those matters?

Ms. WETZL. No, I believe in November of—I have stated that it was in November 1994 that I was promoted to executive assistant. I believe it was November. And it was at that time that I felt I could really throw myself into the project and start working on it—when I had the time, because I was working on several other things at the same time. But that work was sporadic on the project.

Senator KYL. But that was after October 27, 1994?

Ms. WETZL. Yes.

Senator KYL. And, in fact, you became aware of the audit in a very direct manner, I believe. You told the committee staff yesterday that you were present at a meeting between GAO investigators and the White House staff, including Mr. Livingstone and Mr. Christopher Cerf at the counsel's office on November 14. Is that not correct?

Ms. WETZL. I told them that I remembered being present at a meeting which I believe involved the GAO. I wasn't sure of the date. They showed me that date, and I said it probably could be that date.

Senator KYL. Mr. Chairman, I will just conclude with this question. It was shortly after that that you began sending the project update files to the Office of Records Management for storage. Is that correct?

Ms. WETZL. If the timeframe's—they weren't related at all, the meeting and the update project. So I don't know if the time frame is the same.

Senator KYL. Well, I guess that is the point, and this is what troubles me, Mr. Chairman. The timing of these events would suggest that the storage of the files may have been related to the GAO's efforts to investigate exactly what was going on with the Office of Personnel Security. And in addition, according to the committee's interview with Terry Good, the head of the Office of Records Management, it was unusual for the FBI background files to be stored there. In fact, he does not remember any previous administration, including the Nixon administration, doing so. But during the Clinton administration, at least 55 boxes of materials were stored in that office within a short time frame.

I just have to ask the question whether this is coincidence.

Ms. WETZL. The reason I archived most of those files—well, first of all, the reason I archived the files that Tony had left was not only because we didn't need them—I mean, they were separate. They were easy—they were taking up space, really, and they were easy to get rid of. I mean, the vault was not huge. So, therefore, I did that.

At the same time, I did start an archive project sometime after that where I would go through the active files, and people who had left, I would just box them up and send them to Records Management, which I believed was standard procedure. I had never been told that previous administrations didn't do it the same way. And no, the GAO audit and my archiving those files were not in any way related.

Senator BIDEN. Did you want to say something?

Mr. LIVINGSTONE. Mr. Chairman, if I may just make a brief comment to the Senator?

The CHAIRMAN. Go ahead.

Mr. LIVINGSTONE. I think it is real important—I understand your line of inquiry, but I think it is real important to state here, because it sounds like—

Senator BIDEN. Speak into the mike, will you, please?

Mr. LIVINGSTONE. Yes, sir. The files—there isn't anything unusual about us archiving. Perhaps it didn't happen in other administrations, but the files never left the building. We were told by Records Management that they would be safeguarded inside the Executive Office Building, and at any time that counsel needed access to those files, sir, that we could get them. There isn't anything sinister about us needing more space in our vault. We just simply found space from Records Management to store them in the very building. They never left the building, and then Records Management assured us they would be properly safeguarded. So there shouldn't be anything sinister about us moving the files.

Senator KYL. Mr. Chairman, if I could just ask, did either of you mention this to the GAO which was conducting this investigation?

Ms. WETZL. I can say quite honestly that, no, I don't believe I did, because to my understanding, the GAO audit was about new employees, how we get them. Their permanent passes had nothing to do with previous administration employees in the update project. So, no, I don't believe that subject ever came up.

Senator KYL. Did you ever mention it to the GAO?

Mr. LIVINGSTONE. Sir, if the GAO asked us if we had archived files, I'm sure we would have produced our archive list.

Senator KYL. But you don't recall mentioning it to them?

Mr. LIVINGSTONE. No, sir.

Senator BIDEN. Mr. Chairman, may I followup?

The CHAIRMAN. Yes.

Senator BIDEN. One of the things—there is a number of things I want to mention here and find out about. Senator Simpson started off, and he said, the question is: Who authorized the intrusion into these files of people who should not have had their summaries sent back to the White House? Was it an intrusion? What was the intrusion? The intrusion was people who no longer worked at the White House, wanted to work at the White House, had any reason to have their file at the White House, had their files sent from the FBI to the White House at somebody's request.

The reason why these lists are so important—what I am trying to find out—is whether it was some plot you all had over there to get the names of, as Senator Grassley says, this sort of—this plot to ask for a whole bunch of names to hide the fact you were trying to get a couple names. And we have got to find that out, whether that is what you all did or whether or not it was you didn't know what you were doing or you were doing what you were told to do or the Secret Service didn't know what they were doing or the FBI didn't know what they were doing. And it seems pretty clear to me everybody at some point didn't know what they were doing.

For example, the FBI. The FBI sent you over the Duberstein file. The FBI should have never sent the Duberstein file because no file gets sent as an updated file that is older than five years old. The FBI is lax. The FBI should have looked at that file and said this is a 7-year-old file; it is not relevant anymore; it can't be used for anything. It can't be used for anything because it has to be updated every 5 years. So the FBI messed up.

The Secret Service messed up. Even the list that Senator Grassley—

The CHAIRMAN. Senator Biden, if you have questions—

Senator BIDEN. No, I can do whatever I want in my time.

The CHAIRMAN. Well, this isn't your time yet.

Senator BIDEN. It is my time. I—

The CHAIRMAN. I am next—

Senator BIDEN. No, it went Republican-Democrat. I thought that is the way we have done it for 24 years.

The CHAIRMAN. No. The way we have done it is we get everybody through a first round, and then we start our second round.

Senator BIDEN. OK. Fine. Then I will withhold.

The CHAIRMAN. I mean, I will be happy to wait—

Senator BIDEN. I am sorry. I beg your pardon.

The CHAIRMAN. I could ask afterwards, if you want to take your—

Senator BIDEN. No, no, no. I apologize. I thought you recognized me to ask my 7 minutes—

The CHAIRMAN. No. I thought you just wanted to follow on with a question.

Senator BIDEN. No. Sorry. Beg your pardon.

The CHAIRMAN. I would be happy to defer to you if you wanted to go right now.

Senator BIDEN. All right. Well, I will finish it up—

The CHAIRMAN. But let's put the timer on.

Senator BIDEN. I am sorry. I thought the time was on.

The CHAIRMAN. It wasn't.

Senator BIDEN. The lists that Senator Grassley sent down to you, two of them, one of them was dated—and it is established, I think, for the record by Senator Grassley and by you that these are Secret Service files. I mean, Secret Service lists, a list the Secret Service sent you. Now, they are a copy of, they are not the actual list.

Ms. WETZL. Right.

Senator BIDEN. And that list is dated July 8, 1993. My staff went through that list, and there is all unauthorized names on there that shouldn't have been on there. The Secret Service should have never sent them to you. These were people who were long gone, including James Addison Baker. They sent you that file. And they sent you a file as a current—it says employer listing, White House, NEOB and OEOB, WAVES. It comes from the WAVES data base. And it has all these names on it, all these names that shouldn't have been on it: Bates, Bauer, Bean, Bickel, Bell, Bell, Benjamin, Benz, Berg, et cetera. The list goes on. The very names that you later went in and got out—some of them—got out of the vault a year later and boxed up and sent to the archives.

Now, the point that the Senator from Arizona is raising I think is a good one. He is taking you through methodically. I want to make sure I understand it. As I understand the way it works, the chronology here, you come to work, you start the project update. You, for whatever series of reasons, end up going into the vault and finding out there are a list of names, summary files in there that shouldn't be in there, summaries, previous reports of individuals like James A. Baker, who should not be kept in that vault, that Marceca had requested, gotten, and put in the vault. Right?

Ms. WETZL. Well, I didn't see a list.

Senator BIDEN. No, you didn't see a list, but—

Ms. WETZL. I saw the files.

Senator BIDEN. You went in and saw the files, went through a series of files, and said I have identified roughly 300-and-some files—you, Wetzl, identified 300-and-some files. You boxed them up. You boxed them up, and you didn't send them back to the FBI. You sent them to where you thought, by your testimony, you should—to the archives.

Now, they are in the—

Ms. WETZL. The Office of Records Management.

Senator BIDEN. The Office of Records Management. Now, they are in—there is a box in the Office of Records Management that you sent over. Maybe more than one box, but at least a box that contains some of the 481 names everybody keeps talking about.

Ms. WETZL. Yes.

Senator BIDEN. Now, they are in that room. Then we get a list, the one you were asked to look at, of those names, and we see that several of those names that you had already—files you had already sent over to the archives, you now request back.

Ms. WETZL. Right.

Senator BIDEN. One of which is a woman you requested her file back on February 3, 1995, another one March 16, 1995. Mr. Livingstone requests—our favorite guy—Billy Dale's file on June 6, 1996. He also requests from archives the name of—what is it? The other guy, Dylan—how do you pronounce it? Dreylinger. He asks for his on June 5.

Now, my question is this: Why did you ask for any file—and I will give you the list of the files you asked back. You boxed them up, you sent them to archives. Now you are asking for them back. Why did you do that?

Ms. WETZL. Because throughout the course of the update project, while I was still working on it, I had realized—these names would pop up and I would realize that those people still worked at the White House complex, still had permanent passes, we needed a file on them. I would go back to Records Management and get them.

Senator BIDEN. So they were properly asked for in the first place. You thought they were improperly asked for because you didn't think they still worked there, so you sent to archives.

Ms. WETZL. Right.

Senator BIDEN. You later learned, no, no, I was wrong, they have been working here, it was right to ask for them in the first place, send them back to me. Right?

Ms. WETZL. Right.

Senator BIDEN. Now, Mr. Livingstone, why did you ask for Billy Dale's file back from the archives?

Mr. LIVINGSTONE. Can you give me the date, sir?

Senator BIDEN. Yes, June 6, 1996. June 6 of this year.

Mr. LIVINGSTONE. I believe that was in response to an appropriate request from counsel's office to produce the file.

Senator BIDEN. Yes. Now, my understanding is the files you asked for came from a request from the House committee to the counsel's office. They in turn contacted you: Where are the files? You then went to archives, got them back.

Now, if I can have 30 more seconds, Mr. Chairman?

Then what happens is, I say to my friend from Arizona, if I am correct—because I think I am. Then what happens is this whole thing blows up. Now, the FBI says, whoa, you send us back that box. You send us back those 481 names. So you then go to the archives and get this box that had the 300-and-some people who you had sent to the archives. But when they get the box, there are certain names missing. There is a little file in there saying they were sent—there is a little slip—or is there? Was there a little thing in the box saying Billy Dale's file was in here, but it's not here anymore? Because the FBI testified—and this is the confusing part. The FBI testified when they got back the box of files, there were all these files except there were some folders—correct me if I am wrong, staff. There were folders in that box with a name on it, a pink charge-out slip, but no file in it, leading, again, to this sinister thing: What did you all do with those names that had the charge-out slip in it instead of the file?

Now, is that the chronology? Is that what happens? You send them. You go in the vault at some point and say, hey, these files shouldn't be here. You box up a series of files. You send them over to archives. Then you realize you sent some over you shouldn't

have sent over. So as you realize that, you ask for them back. A file goes into the archives box that says "Charged out to Wetzl," "Charged out to Livingstone," charged out to whoever asked for that file. Then the FBI comes along and says send us back that box. They get a box back, and the box has all these files in it except for a few that say charge-out. And your testimony here today is—and I want to make it clear that I understand it—is that files that you asked to be charged out from the archives, Mr. Livingstone—and we will submit to you those names, that is, Billy Dale as one—were charged out by you at the request of the White House counsel's office. Is that correct?

Mr. LIVINGSTONE. That is correct, sir.

Senator BIDEN. And to the best of your knowledge, although I doubt whether you can know for certain, you assumed they were being asked for by the White House counsel's office for what purpose? Or do you know?

Mr. LIVINGSTONE. I believe that it was in response to either the independent counsel or the Government Oversight Committee.

Senator BIDEN. And, Ms. Wetzl, the names that you—the files that you asked for back, that is, got charged out to you, you asked for them back for what reason?

Ms. WETZL. Because I subsequently realized that those people still worked at the White House complex, still had permanent passes, and I needed a file on them.

Senator BIDEN. That you needed the file in your office, not in the archives.

Ms. WETZL. Right.

Senator BIDEN. So the issue is whether or not anybody asked for those files—once they got to the archives, they were in the protection of the archives. What we have to know is—and I think you have answered—why were files then taken out of the archives? The testimony here is, by you, Mr. Livingstone, you asked for no files, to the best of your recollection, that weren't requested of you by White House counsel from the archives.

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN. And, Ms. Wetzl, you asked for no files that you did not believe needed to be returned because you had learned that they still worked in the White House. Is that correct?

Ms. WETZL. Correct.

Senator BIDEN. Thank you very much.

The CHAIRMAN. And there was no reason for White House counsel or anybody else to request Billy Dale's file at that late date?

Senator BIDEN. Well, Mr. Chairman, I think we have to find that out.

The CHAIRMAN. No, I am not finding fault with you. I am just saying there was no reason for it.

Senator BIDEN. Well, Mr. Chairman, we have to find that out, because that is why we should call in the White House counsel here and ask them why they asked Mr. Livingstone for the file. Because it appears as though it was in response to a request from the House committee investigating this matter. I don't know that for certain. I want to find that out.

The CHAIRMAN. I still don't see any reason for them to call back Billy Dale's file at this late date.

Senator BIDEN. Well, if, in fact, the House requested it—

The CHAIRMAN. A long time after he was indicted and prosecuted.

Senator BIDEN. If, in fact, the House committee investigating this matter or Travelgate requested, sent a subpoena to the White House and said, White House counsel, send me any file you have on Billy Dale, then it would have been appropriate for White House counsel to ask Mr. Livingstone to go find the file, if there was one, and for Mr. Livingstone to go back to archives and get it and give it to White House counsel and White House counsel send it to the House.

The CHAIRMAN. See, you and I differ because I don't think there was any reason to get Billy Dale's file to begin with.

Senator BIDEN. Well, I understand that, but the question is: Did the House ask the White House counsel, did the House of Representatives—

The CHAIRMAN. Well, OK.

Senator BIDEN [continuing]. Ask the White House counsel for the file?

The CHAIRMAN. We got your point.

Now, we are going to start the second round, but this is going to be the last round. I allowed Senator Biden to jump over and start, so I am going to take my 7 minutes, and then I am going to yield to Senator Grassley. So everybody understands, ordinarily I would have yielded to Senator Biden and then to Senator Grassley, but—

Senator GRASSLEY. What are you going to do when the vote starts at 12:30 p.m.?

The CHAIRMAN. We will have to recess and then hopefully you will come back.

Senator GRASSLEY. Yes, I will come back.

The CHAIRMAN. In fact, you might as well go vote so you can get back.

Senator BIDEN. Thank you, Mr. Chairman, for allowing me to go. I will vote and come back.

The CHAIRMAN. Just so nobody feels like I am jumping over Democrats because that is the way it would normally have worked.

Let me just say this at the beginning before I start my questioning just as chairman. Although Mr. Marceca is not here today, I intended to ask him about some of the following matters, among other things.

Earlier this week Mr. Marceca supplied to Congressman Clinger and this committee what appeared to be a printout of information on one or more computer disks. I was particularly interested in the items he supplied bearing Bates numbers 000132, 000134, and 000135, each sheet redacted. It appears these documents contain confidential information he acquired while working at the White House, and yet had remained in his possession.

Additionally, I wanted to ask him about the Wall Street Journal article which indicated he looked at his own FBI file at the White House after his detail had ended and that he used this information to sue two people who had provided the FBI with negative information.

As I have said, Mr. Marceca has chosen to assert his right—if he has one—against self-incrimination today, and I am concerned that Mr. Marceca has refused to testify about the many issues on which he has already testified under oath before the House. But it is telling that Mr. Marceca may believe that all of his testimony he has given may be incriminating. I don't know if it is. But our investigation is going to continue.

One thing it does show, however, is that this investigation is getting somewhere. This is not just an innocent bureaucratic snafus, as it has been described. The more we dig, the more we learn.

Now, I am very concerned about this, and we are going to follow through on this and find out just what is the situation.

Now, put my time on. This is the last round. We are going to give everybody 7 minutes, and let me just mention that Senator Thurmond has been here, but he is managing the bill on the floor, so he can't be here the full time, and he asked me to apologize to everybody concerned.

Now, Mr. Livingstone, I would like to ask you about an area I had intended to question Mr. Marceca about. Since you began work at the White House, have you owned or had access to a home computer or a laptop computer?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. You have had neither? Neither a home computer nor have you had access to a laptop computer?

Mr. LIVINGSTONE. I have a home computer that I got from my parents.

The CHAIRMAN. Well, that is what I mean.

Mr. LIVINGSTONE. Yes, sir—

The CHAIRMAN. Did you have a laptop computer that you used at the White House or had access to?

Mr. LIVINGSTONE. Well, I was going to—

The CHAIRMAN. If you wanted to.

Mr. LIVINGSTONE. What I was going to say, I'm sorry, I had a home computer that was given to me by my parents, which I haven't installed, to be precise.

The CHAIRMAN. OK. But nothing else?

Mr. LIVINGSTONE. And I do not have a laptop.

The CHAIRMAN. OK. At any time did you ever maintain a data base of any type on a Government computer in which you maintained data or information taken or derived from FBI files, IRS files, or any other similar governmental source?

Mr. LIVINGSTONE. If I understand your question, sir, you are asking me if I have ever entered in data from Government forms?

The CHAIRMAN. Right.

Mr. LIVINGSTONE. Pursuant to our office, our duties, we have a data base called the security tracking system. I believe that has 12 to 15 codes. They are fields of entry that will say FBI date, meaning when the form was received in the office, when it was sent to the office, and when it was received back in the office completed.

The CHAIRMAN. And you may have entered things in and out of there?

Mr. LIVINGSTONE. I didn't do data entry, no.

The CHAIRMAN. Did you ever take home computer disks from the White House while you worked at the Office of Personnel Security?

Mr. LIVINGSTONE. No.

The CHAIRMAN. OK. Did you keep computer disks after you finished your detail at the White House, any computer disks of any kind?

Mr. LIVINGSTONE. Just for the record, sir, I wasn't detailed. I was employed, just to be precise. When I completed my employment this week, I did—all my things were still in my office.

The CHAIRMAN. So you don't have any computer disks?

Mr. LIVINGSTONE. I have computer disks at home for my home computer.

The CHAIRMAN. OK. But they are not related to the White House?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. In any way.

Mr. LIVINGSTONE. In any way.

The CHAIRMAN. Did you ever copy any material from those White House disks onto the hard drive on any other computer?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Did you ever copy any material from those White House disks onto any of your own floppy disks?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Did you ever keep a hard copy of the information on any White House disk?

Mr. LIVINGSTONE. On White House disk—hard copy from a—
The CHAIRMAN. That was on those White House disks.

Mr. LIVINGSTONE. Yes, we have a project which is called—well, I don't know. It's not a project. It's a spread sheet. It's a Lotus spread sheet which tells us when an employee has entered on duty, when they have been drug tested, when they submit their paperwork, when they get their temporary pass, when they get their security briefing, when they get their IRS report, and when they get their permanent pass. And that is printed out on a spread sheet, sir, which helps us to stay on top of each employee's progress, by office.

The CHAIRMAN. On your security tracking system you referred to, did your office input any FBI information, file information, into that system?

Mr. LIVINGSTONE. I don't want to put Ms. Wetzl on the spot, but since she did some of the data entry, she would probably be a better person to ask.

The CHAIRMAN. I would be happy to have you answer that.

Ms. WETZL. No, sir. The only information that was entered was date information and pass type and things like that. There was no investigative information put into the computer.

The CHAIRMAN. Do either of you ever remember anybody at the White House authorizing any employee to take computer disks from the White House, either of you?

Ms. WETZL. No. It never came up.

The CHAIRMAN. Mr. Livingstone?

Mr. LIVINGSTONE. I don't—I'm trying to remember the security briefing I had, sir. I believe the only thing we were told is not to put classified material on a security disk—excuse me, a computer disk.

The CHAIRMAN. OK. Were you—

Mr. LIVINGSTONE. I don't know that we were instructed not to have computer disks.

The CHAIRMAN. Now, you worked quite closely with Mr. Marceca?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. Were you aware that he was putting things on computer disks?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Were you aware that he was taking them home with him?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Were you aware that he had access to all these files?

Mr. LIVINGSTONE. I'm sorry. What files?

The CHAIRMAN. That were in the safe or the locked room.

Mr. LIVINGSTONE. Yes, sir. Yes, sir. Anyone in that room had access to those files.

The CHAIRMAN. Was it part of his responsibility to read those files and to get information to you and others?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. OK. But you are personally not aware of his taking out of the White House personally any computer disks or any other information?

Mr. LIVINGSTONE. I believe I recall Mr. Marceca having a laptop computer, but as I understood it, he had some ongoing criminal investigations, and that might—I assume that is why he had the computer.

The CHAIRMAN. He testified before the House Wednesday that he routinely took home computer disks that did have at least some analysis of FBI files on them. And you are not aware of that?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. You were never aware of that?

Mr. LIVINGSTONE. I don't believe so.

The CHAIRMAN. He never discussed it with you?

Mr. LIVINGSTONE. I don't believe I ever had a discussion with him.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. About taking home data.

The CHAIRMAN. Now, have you ever reviewed anyone's tax returns while in your job in—

Mr. LIVINGSTONE. Yes, sir. That would be part of my daily job.

The CHAIRMAN. I see.

Mr. LIVINGSTONE. After it was reviewed by counsel's office, as a matter of procedure, it would be sent to me for the file.

The CHAIRMAN. Were any tax returns in any of these secure files, any of these—

Mr. LIVINGSTONE. I need to—

The CHAIRMAN [continuing]. Confidential files?

Mr. LIVINGSTONE. I understand. I understand the Senator's question. Sir, I think it needs to be made clear. We don't get tax returns. We get like—

The CHAIRMAN. What about tax information then?

Mr. LIVINGSTONE. We get a summary. It's usually one paragraph if there's no problems, and 2 paragraphs, 3 paragraphs, like filed late, and it's usually for a 3-year period. It's not your whole life.

The CHAIRMAN. Have you ever taken home any FBI summaries?

Mr. LIVINGSTONE. No.

The CHAIRMAN. In those FBI files, were there any tax returns at all in any of those files, to your knowledge?

Mr. LIVINGSTONE. No, sir. The FBI—

The CHAIRMAN. Just summaries is what you are saying.

Mr. LIVINGSTONE. I'm sorry?

The CHAIRMAN. Just summaries of tax matters.

Mr. LIVINGSTONE. I'm sorry. You're talking about the FBI files that got—

The CHAIRMAN. I am talking about the actual files we are talking about. Were there any—

Mr. LIVINGSTONE. I don't have any knowledge directly of the files they picked up, sir, because I wasn't involved in their collection that night. I think I testified earlier that those files were collected later that night without me.

The CHAIRMAN. Now, in your answer in my first round of questions—let me just ask this. I asked you did the President, the Vice President, or the First Lady have any role in your being hired at the White House, and if I recall correctly, you said no, not to your knowledge.

Mr. LIVINGSTONE. Not to my knowledge, sir.

The CHAIRMAN. OK. Now, that is somewhat surprising to me as I look at it today because in a book that is excerpted in the Wall Street Journal today, former FBI Agent Gary Aldrich says that Mrs. Clinton wanted you hired. In response to Mr. Aldrich's concerns about your appointment, Mr. William Kennedy supposedly said, "I guess I see your point, but it doesn't matter. It's a done deal. Hillary wants him."

FBI Agent Dennis Sculimbrene has confirmed this statement in an interview with committee investigators. Both agents, of course, have had careers with the FBI.

Are you sure that neither the First Lady or the Vice President or the President had anything to do with your appointment?

Mr. LIVINGSTONE. Are you asking me to comment on that book?

The CHAIRMAN. Sure. Well, is it true?

Mr. LIVINGSTONE. I haven't had a chance to read it, and, B, as I have stated, I don't—of course, I worked for the Vice President helping putting together his announcement for the President in 1988. I had no knowledge that he put in a word for me. I suppose it's possible, but I certainly don't recall going to him on any occasion saying, sir, would you please call so and so on my behalf?

The CHAIRMAN. I am going to ask just a couple more questions.

Did you ever meet or have an interview or a discussion with Vince Foster when you were trying to obtain a position at the White House, or in any other manner?

Mr. LIVINGSTONE. I am sure that I met with Vince Foster at some point.

The CHAIRMAN. OK. Have you ever read or reviewed Billy Dale's FBI background file, personally?

Mr. LIVINGSTONE. I think I looked at his file. When I—

The CHAIRMAN. Have you read or reviewed it in any way?

Mr. LIVINGSTONE. I don't know that I reviewed it.

The CHAIRMAN. Did you read it?

Mr. LIVINGSTONE. I was trying to determine why we had his file when Congress said—this is my recollection—when I got asked by or when Congress stated, Mr. Clinger stated that the White House had asked for Mr. Dale's file 7 months, I believe, after he had departed the White House, as I recall it, we requested the file, we looked at the file, and we determined by the date on the FBI document that in fact that was true; that apparently we had asked for it erroneously.

As I recall it, the file had I think 8 or 10 pages, something like that, and I looked through it trying to figure out if there was any supporting information as to why we ordered the file.

The CHAIRMAN. Well, I am going to turn to Senator Simpson at this time. Then we will go to whoever is on the Democratic side. If there is nobody there, we will go then to Senator Grassley.

Senator SIMPSON. If you will hit that fast 7 minutes, then I can get over before the vote.

The CHAIRMAN. Could I just ask one last question?

Did you ever discuss the contents of the Billy Dale file with anyone?

Mr. LIVINGSTONE. I don't have any recollection of that.

The CHAIRMAN. OK. All right.

Senator Simpson.

Senator SIMPSON. Mr. Chairman, I thank you. I will take a quick 7 minutes, and I will go to vote, and hopefully one of my colleagues—

Mr. LIVINGSTONE. Sir, Mr. Simpson.

Senator SIMPSON. Yes?

Mr. LIVINGSTONE. If I could just clarify that, Mr. Chairman?

The CHAIRMAN. Yes.

Mr. LIVINGSTONE. Over 3 years I got asked by many different investigative bodies, from the White House, the GAO, the appropriate Members of Congress. I am sure at some point in those 3 years I said, "You know, we have a file on Billy Dale," and—

The CHAIRMAN. So you knew it was there?

Mr. LIVINGSTONE. But I didn't know that we had gotten it out of—you know, inappropriately. I was not aware of that until this month.

The CHAIRMAN. OK. Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman.

Well, it is a vexing thing, you can see, for all of us, and it is not a giant partisan thing for me. It comes from the fact of my frustration that every time I see an FBI file, I have to have somebody sitting there. I have to me in my office as a U.S. Senator with an agent sitting with me. I am offended by that.

I must say that is a great irritant, because I practiced law for 18 years, and I was a U.S. Commissioner, and I worked with the Bureau on the little things that you do as U.S. Commissioner, now magistrate. And to think that these files are just kind of bouncing around, just kind of galls me. They were just there, and access could have been obtained by interns, could have been obtained. It

went back and forth to the counsel, went back and forth in the offices.

And Senator Leahy asked you, you know, "Who did ask you for the files? Did the President?" "No." But somebody asked you for the files, and you have said, "The counsel's office." Who specifically asked you for the files most?

Mr. LIVINGSTONE. Are you talking about in general terms the files—

Senator SIMPSON. A human being. What human being would call you and say, "Craig, old pal, ship me this one on this guy."

Mr. LIVINGSTONE. I understand that part of your question. I'm sorry. You mean files in general?

Senator SIMPSON. Yes, I mean files, the FBI summary files of people that you administered. You administered these files.

Mr. LIVINGSTONE. Almost without exception, sir, it would be the person whom we immediately report to, and at that time it would have been William Kennedy.

Senator SIMPSON. Then do you know who asked him to get it?

Mr. LIVINGSTONE. No, sir.

Senator SIMPSON. Ever. Did he ever say—

Mr. LIVINGSTONE. Well, I can't sit here and just come up with an answer, ever in 3 years' time. I will try, if you will give me a minute to pause and think.

If you are asking me did I ever produce a file to Mr. Kennedy pursuant to an investigation that we were working on, outside of—excuse me, outside of an investigation that we were working on, for someone who had clear need of access to the White House and/or employment, no. I don't recall ever doing that.

Senator SIMPSON. But when the call came, you delivered?

Mr. LIVINGSTONE. Well, yes, sir, that is my job.

Senator SIMPSON. I know, but I am asking you, did you know who had requested it other than the counsel? Was there anyone above that? Obviously somebody asked for a file, some of them legitimate, some we think perhaps not legitimate, almost maybe out of paranoia or something that they were asked for.

Mr. LIVINGSTONE. I have beat myself up a fair bit today, and I will tell you that one thing that we were very good about and that we knew was important, was that the reason we had the files is because the FBI or Justice Department had determined that counsel was the representative for the President to receive background information, and that it would first be sent to them and—Mr. Simpson, I'm sorry. Maybe I am confused. Are you asking me about counsel asked me for files that are in my vault, or counsel says go to the FBI and get this information?

Senator SIMPSON. No, I really—you see, I am not into complexity. I didn't graduate with honors. I didn't—

Mr. LIVINGSTONE. I thought you were saying about the vault.

Senator SIMPSON. I just am here as a guy who practiced law for 18 years. When somebody calls you and says, "Craig, I want a file, I want the one on, the FBI file on old Joe Jerkhead," do you know of anybody above the counsel that asked for those files, you personally?

Mr. LIVINGSTONE. I believe I have testified earlier, sir, that no one outside of counsel's office would be appropriate to ask for it, so

no one outside of counsel's office to my knowledge has ever requested a file from the office for which I used to work.

Senator SIMPSON. Well, I am just trying to align myself, thinking, you know, you are sitting here with your parents. It is a tough issue for you. I used to bounce at the Summit Tavern. I weighed 260 and had hair, and I did that. I bartended. I felt some type of empathy.

And here you are. You are being grilled all over the place, and they are after you, and it must be tough. But all we are trying to get is to—and then people are saying you knew the Clintons, that you made a statement that you saw President Clinton every day. Did you see President Clinton every day? You were alleged to have said that.

Mr. LIVINGSTONE. That is what it said in the newspaper.

Senator SIMPSON. Is that true?

Mr. LIVINGSTONE. I saw the President probably, at that time, daily, just like everybody else that worked there. And to make that clear for the record, I did not mean to infer that I met with him and things like that.

Senator SIMPSON. I see, but if no one asks, you know, you don't know where the—there was testimony here today no one asked for the files, no one knew they were there, and the issue for us is, why were they there? And then Tony Marceca, who worked under you—is this correct? This man worked under you?

Mr. LIVINGSTONE. He worked in our office, yes, sir.

Senator SIMPSON. I mean, he worked under you?

Mr. LIVINGSTONE. Yes, under me.

Senator SIMPSON. You asked him to come there, didn't you?

Mr. LIVINGSTONE. Yes, sir.

Senator SIMPSON. You said, "Will you get this guy and bring him here to help me?" You did that, didn't you?

Mr. LIVINGSTONE. No, actually he said he wanted to help the administration.

Senator SIMPSON. But you got him there?

Mr. LIVINGSTONE. I talked to Mr. Kennedy. I thought that we needed help, and he seemed like a person that could help us with—

Senator SIMPSON. But you got him there. You helped get him there.

Mr. LIVINGSTONE. Yes, sir.

Senator SIMPSON. OK, and he ranged far and wide, apparently. I mean, he ain't here, and that is fine. We should make no response to that. But he is not here, but this man is going to take—he is the chief patsy in this game. He is the dumpee, and he is not here.

He is going to take the fifth, and he should. His counsel has given him some very good advice, because he must have been a free-ranging cat in this operation while everybody else was just supposed to say, "When this all comes, don't forget it was old Tony that was messing around with Dale's file and Jim Baker's file and all these other files." That is where old Tony has ended up.

My honest admonition to you is a very simple one. To one who has been there, known often as Alibi Al in earlier days, this is big time.

Mr. LIVINGSTONE. Mr. Simpson, I appreciate that, and I would like to state, so we might make something clear for you, if I may. If you are asking me do I have any knowledge that anybody in the White House at all, even in counsel's office, anybody, requested these copies on these individuals we are talking about, I don't believe that ever happened, ever, with anyone, period.

Senator SIMPSON. That nothing like what ever happened?

Mr. LIVINGSTONE. The 300, 400 files we are talking about, I have no knowledge and I have no reason to believe that anyone, not even anyone in counsel's office, ever asked for that information.

Senator SIMPSON. Well, then, the great question is, what was it doing there? That would be a great question for Americans to find out. I wouldn't want mine there, just because it should be in a different place than that.

Mr. LIVINGSTONE. Sir, we were overly dependent on the Secret Service to provide us with a list of people that needed to access the complex. That is—

Senator SIMPSON. Well, this is very disturbing to the American people, that these files, just with selections, whether you have got lists or double lists or triple lists or no lists or whatever it is, that our stuff, because we wanted to go to work for the government once, is just there in boxes, moved back and forth. That is disturbing. That is very disturbing. That is where I am coming from.

Mr. LIVINGSTONE. Yes, sir.

Senator SIMPSON. But, anyway, I thank you. I must recess. Thank you for your testimony. We will recess at this time.

[Recess.]

Senator GRASSLEY [presiding]. I would call the meeting to order. Senator Feinstein would be next.

Senator FEINSTEIN. I have no further questions of these witnesses.

Senator GRASSLEY. OK, then, I will go to my own questioning.

In way of clarification more than question, Ms. Wetzl, I would like to clarify one point you made as you visited about this document that I gave you. You indicated that there was no status column on this list as opposed to the other list. In other words, there were no I's or A's on there for "inactive" or "active." And so I want you to understand and the audience to understand that the reason that there aren't any I's or A's on the actives list is because on this list they are all actives, all actives.

Senator BIDEN. Alleged to be active, right, Senator, but they weren't.

Ms. WETZL. But they weren't.

Senator BIDEN. They weren't. That is the point.

Senator GRASSLEY. OK. Well, then, I will clarify further on that as well, Senator Biden. But the I's and A's appear only on the master list. We would agree with that.

And a point of clarification, then, in the comment that Senator Biden had made previously about the list having names on it that don't belong there, the July 1993 list, which is this list, does not include 379 of the 477 universe of unauthorized names. Of the remainder, 85 were correctly listed as active.

Now there were 13 exceptions to this. A couple of examples of those 13 would be James Baker, Marlin Fitzwater, who were

among those 13. Now on this point, Senator Biden and others, on the next panel the Secret Service is prepared to clarify in their testimony the things that I have just said, but even make them more clear.

Mr. LIVINGSTONE, Senator Biden has asked you a number of questions about the House committee request for documents relating to Billy Dale. In fact, the House Committee on Government Reform and Oversight did issue a subpoena to the White House in January 1996 because of the White House's refusal to comply with document requests.

It is my understanding that Chairman Clinger's committee had no knowledge that your office had Billy Dale's confidential FBI background file. In fact, they received that FBI file on May 30, 1996, after the committee had a contempt vote. Up until then, Jack Quinn of the White House counsel's office was claiming executive privilege over those documents.

Did you notify the counsel's office that you had Billy Dale's file in January 1996, when you became aware of the subpoena?

Mr. LIVINGSTONE. Sir, I don't specifically recall when I notified counsel's office, but I do know that they have known about it for some time.

Senator GRASSLEY. Could you tell us when you did notify the counsel's office that you had Billy Dale's file?

Mr. LIVINGSTONE. I believe I just answered that, but I believe for some time.

Senator GRASSLEY. In other words—

Mr. LIVINGSTONE. I'm sorry, I—

Senator GRASSLEY [continuing]. You did notify them, but you don't know when? Was it before—

Mr. LIVINGSTONE. I want to be precise here, because you have asked me a very specific question.

Senator GRASSLEY. Yes.

Mr. LIVINGSTONE. I remember having a conversation with someone from Records Management saying that they had also notified counsel that this file was in storage. So I don't know the specific date, but I know that more people than myself knew about it.

Senator GRASSLEY. OK. Do you know whether or not your involvement with that was before or after the House's contempt vote, the committee's contempt vote?

Mr. LIVINGSTONE. I do have specific memory, of course, for the past month, but in notifying counsel about the file.

Senator GRASSLEY. Do you know whether that was before or after the contempt vote?

Mr. LIVINGSTONE. Do you know what the date was, sir, to perhaps refresh my memory?

Senator GRASSLEY. The date of the contempt vote? Well, the House had received the FBI file on May 30 of this year, but I don't have the date for the contempt vote. We will get that date and then ask you.

To your knowledge, when did the counsel's office first become aware, then, that Billy Dale's FBI file, his background file, was in your vault?

Mr. LIVINGSTONE. I don't know. I want to be specific here. I don't know that they knew that we had his FBI background. I know that they knew we had a file on him.

Senator GRASSLEY. OK. If the file was produced, if the file was produced to the committee on May 30, 1996, why were you requested to obtain the file on June 6, 1996, which would be 7 or 8 days later?

Mr. LIVINGSTONE. I believe that was in response to the independent counsel's request for the actual file.

Senator GRASSLEY. Again, Mr. Livingstone, apparently the materials that you turned over to the House Committee by Mr. Marcea had notations that tax documents were obtained from some on the list. These were reported to you, according to Mr. Marcea.

I know that the chairman of the committee asked you a question about tax returns. Before I ask you a very specific question, I want to state what my opinion of the law is. It doesn't matter whether it is the file or information about tax information, the law applies the same way.

What process did you follow when you obtained tax information, which has special procedures that must be followed under Internal Revenue Code Section 6103? Do you know of any tax information obtained on former employees? Did you realize that the President had to personally sign this request for this information to come, and did the President sign?

Mr. LIVINGSTONE. I will try to answer all of that, but to the best of my ability.

I believe that I testified earlier, sir, that we don't get tax returns. All we get is a little summary, and I believe it only goes back 3 years.

Excuse me?

Senator GRASSLEY. I want to state again what I previously said. It would still follow under, even if it is tax information, it would still follow under the same statutory requirement that Congress be notified and the President sign off.

Now go ahead and answer your question.

Mr. LIVINGSTONE. OK, I will do my best to answer.

Senator, as I understood it, the way I was instructed by the former employees, there is a specific form that we had to use called a consent form. The particular individual for whom we were requesting tax information had to read the form. I don't have it in front of me, but it basically said, "You authorize the White House on your behalf to request the IRS information on your tax," your tax status, I believe is the word. We would get that signed, and it would go to a specific individual at the IRS under the particular counsel's name, and we would do that pursuant to reinvestigations or new employees.

Senator GRASSLEY. OK. Now, it is true that new employees would sign that waiver.

Mr. LIVINGSTONE. Yes, sir.

Senator GRASSLEY. But why would a former employee sign that waiver?

Mr. LIVINGSTONE. A former employee that might have come back, sir. We had many people, to my knowledge, that were in the pre-

vious administration, particularly like in the NSC, who were re-detailed to the White House for the crisis in Cuba, for example.

Senator GRASSLEY. Yes, but not Billy Dale, and he had income tax information in his file.

Ms. WETZL. May I answer that?

Senator GRASSLEY. Yes.

Ms. WETZL. Billy Dale for a few months did work for the Clinton administration. I don't know the date of the IRS summary that was returned, but I will tell you that the IRS will not accept the waiver if the signature of the individual is not within 60 days.

Senator GRASSLEY. So then you are saying it has to be renewed if it is older than 60 days.

Ms. WETZL. Yes.

Senator GRASSLEY. Then did you realize—

Ms. WETZL. Excuse me, sir. I also want to make clear that I did not actually see Billy Dale's tax information in his file. I don't know that we had any tax information on Billy Dale.

Senator GRASSLEY. Again, this is a repeat of the question. I don't mean you didn't intend to answer it, but I asked you three questions at once.

Did you realize that the President had to personally sign the request for this tax information, and did the President sign?

Mr. LIVINGSTONE. Sir, I have never been told that the President of the United States had to personally sign it.

Senator GRASSLEY. I hope I am not abusing my time limit, because I do have that date for the—

Senator BIDEN. You are, but I think you should keep going. You have abused it by about 5 minutes, but I think it is a good thing to do. Follow on. Follow the line of questioning all the way through.

Senator GRASSLEY. I have got my line of questioning done, Senator Biden.

Senator BIDEN. I am all for abusing questions.

Senator GRASSLEY. I just promised Mr. Livingstone a date. The contempt vote in the committee was May 9. As this date related to the question I asked you about when you notified the counsel's office, was that before or after the vote, which was May 9?

Mr. LIVINGSTONE. About Mr. Dale's file?

Senator GRASSLEY. Yes.

Mr. LIVINGSTONE. I am sure that counsel's office was aware that we had a security file on Mr. Dale prior to May 9, 1996.

Senator GRASSLEY. OK. Senator Simon?

Senator SIMON. Yes. I yield my time to Senator Biden.

Senator BIDEN. Thank you, Senator.

I want to clarify a few things before you all leave and the next panel comes. The list that Senator Grassley gave to you, he sent down two lists. Senator Grassley sent down, Ms. Wetzl, to your table, two lists, a fat list and a skinny list.

Ms. WETZL. Yes.

Senator BIDEN. You acknowledged that they were—one is an actual printout from the Secret Service, the way they did it—

Ms. WETZL. Well, I didn't get a chance to look at the thick one. Someone took it away from me again.

Senator BIDEN. But at least the paper is the same, right? It is the green and white—

Ms. WETZL. From here, yes. It looks like Secret Service, yes.

Senator BIDEN. And the other one, the skinny list, appears to be a copy of an actual list generated by the Secret Service.

Ms. WETZL. Yes.

Senator BIDEN. Now, the Senator then said the reason why there is no designation, active, inactive, on the skinny list, is because they are all sent to the office on July 8, 1993, out of their—I assume W-A-V means the waive data base, but I will wait to have them testify to that—that was sent over to your office, Mr. Livingstone, this list, and there are a lot of lists floating around, the reason why it didn't have active or inactive in the column is because they were all active. They were advertised by the Secret Service as this is active list.

Then the Senator from Iowa said, although it is true that there are some inactive people on that list that were told to your office to be active, told by the Secret Service, that it wasn't the entirety of the list of 300-some people or 400 people who were inappropriately—whose names were inappropriately asked for.

There are a lot of lists out there, but this list, purported to be accurate on July 8, 1993, had 93 names of the 480 names that we keep talking about that shouldn't have been on this list. Now, maybe the Secret Service has an explanation of why that occurred, but I just want to establish that there was a list, the one shown to you, Ms. Wetzel, submitted to your office by the Secret Service, purporting to list all active people, or all the people on the list purported to be active employees, 93 of whom at that date were not active.

Now, I don't know what that means yet, but I just want make sure we establish the facts. That is uncontroverted.

The reason why I keep going back to these lists—yes? Did you want to say something?

Senator GRASSLEY. Yes. The fact that I was establishing was that there are 379 names not on that list.

Senator BIDEN. Well, I understand that, but there are 93 of the same names that are on that list. James A. Baker's name is on that list, and he wasn't active. Mr. Amoreshi's name is on that list. Mr. Baer's name is on that list. Mr. Bailey's name is on that list. Kathleen Margaret Baker's name is on that list, and they were all on the other list you keep referring to, but they are not active. They were wrong then. They were wrong in July.

They, the Secret Service, were wrong on the July 8, 1993. Now, whether they were wrong again in another list they gave somebody, that remains to be seen, but 93 of the 300-some names you are worried about were on this list inappropriately, submitted by the Secret Service on July 8, 1993. That is the only point. The Secret Service doesn't know what the heck they were doing, apparently, either. No one seems to know that—

Senator GRASSLEY. So you get to the question, where do the 379 names come from?

Senator BIDEN. Well, I can tell you where 93 of them come from; 93 of them come from an inaccurate list submitted. I don't know where the rest come from.

Senator GRASSLEY. Three hundred and seventy-nine names, and we have got to establish where they came from.

Senator BIDEN. Well, sure, but we know where 93 of those 370-some came from. They came from a bad list submitted by the Secret Service.

Look, this reminds me of that joke, you know, "Willy screwed up center field so bad, no one can play it." I mean, you know, it seems like no one knows who's on first, who's on second, or who's pitching. I mean nobody. I mean this administration, with all due respect to the administration, seems not to know what they were doing, and the people who were supposed to serve them and serve from administration to administration also seem not to know what they were doing.

As one Senator said to me on the way back over here, "Thank God the Russians aren't coming." We would be in real trouble.

I would hate like heck to have the Secret—I don't know. I mean, I love the Secret Service. I am going to get in real trouble with them. I will probably never get to the White House again in any administration. But, my Lord, I mean, this is the outfit we are counting on to protect the President of the United States of America, this one, the next one, the past one? And they have got 93 people on here that shouldn't be on here?

Now, maybe none of the 93 on here are security risks. I assume they aren't, because they were at one time cleared, so they are not security risks, but at least no one knows what is going on. That is all I want to establish, so it is clear I am not the only one confused.

The other thing I want to point out here is the subpoena, the subpoena that came from, that Senator Grassley is talking about, that came from the Clinger committee. Paragraph 29 of that subpoena says:

All records relating to matters of the *United States of America v. Billy Dale*, any investigation by the Justice Department into the White House Travel Office matter as defined in paragraph 2, all records relating to Billy Dale, as well as any records of talking points prepared about Mr. Dale to the President.

Now, this is the subpoena resisted by the White House. White House counsel said no, they are not going to comply with it, and then an agreement was worked out or they caved or a contempt proceeding or something happened sometime in the end of May, and the testimony is by Mr. Livingstone that on—actual testimony, we went back and established—on May 21, in response to this subpoena, the file was pulled and sent to Clinger. Then, on June 6, the file was pulled and sent to the independent counsel.

Now, the only thing I am trying to figure out is, why would the independent counsel want it? There is nothing—maybe, maybe it is sinister. I don't know. But what you testified to, and we have a record of, on June 6, 1996 you, Mr. Livingstone, asked somebody to go to the archives to pull out the Billy Dale file that was in the archives, that had been sent there by Ms. Wetzl some months or a long time earlier. It got pulled out and sent up to the White House counsel's office by you.

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN. Now, on May 21, the thing I don't know, was that same file pulled from the same box by somebody and sent to Clinger, or was the file—keep in mind there's more than one Billy Dale file. The FBI still has a file, the same file on Billy Dale that you have got in the box in the archives.

So I am trying to figure out where the Billy Dale file that went to the Clinger committee on May 21, came from.

Mr. LIVINGSTONE. Sir?

Senator BIDEN. Yes?

Mr. LIVINGSTONE. By way of explanation—perhaps it will help the committee—my understanding is that the copy of Mr. Billy Dale's file was sent to Mr. Clinger, that the independent counsel asked for the original file from the White House.

Senator BIDEN. OK, now wait a minute. Now, let me get this clear and then I will stop. Your understanding is that on May 21—you wouldn't know whether it was May 21 or not, but that is when Clinger got a copy of a file.

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN. What file do you assume was copied? Was it the file sitting in the archives, Billy Dale's file that was now in the archives on May 21? Was that the thing that was copied and sent? Do you know?

Mr. LIVINGSTONE. That is my belief.

Senator BIDEN. Now, so then Billy Dale's file gets put back, in summary—

Mr. LIVINGSTONE. Yes.

Senator BIDEN [continuing]. Gets put back in that archives?

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN. It is copied, sent to Clinger, put back in. Your understanding is then you get a request from White House counsel because independent counsel is asking for what original files you have on Billy Dale, right?

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN. So you go to the file and you—did you physically go over to the archives?

Mr. LIVINGSTONE. No, sir.

Senator BIDEN. You commissioned someone who worked for you to go over—

Mr. LIVINGSTONE. Yes, sir.

Senator BIDEN [continuing]. Pull out the original Billy Dale file that you received from the FBI through Marceca's request some months earlier. You pull it out. A slip gets put in that box saying, request by Livingstone, so the archives knows where it is. It is not the archives. Help me out.

Mr. LIVINGSTONE. Records Management.

Senator BIDEN. Records Management knows where the file went. You take that, "original" that you got from the FBI, your office got, and you take it up to White House counsel's office?

Mr. LIVINGSTONE. That is correct, sir.

Senator BIDEN. And then you assume White House counsel then transmitted it to independent counsel?

Mr. LIVINGSTONE. That is correct, sir. That is my assumption.

Senator BIDEN. Well, if that is true, there is not much of a mystery.

My time is up.

The CHAIRMAN. OK. Senator Thompson?

Senator THOMPSON. Yes. Records Management—did they use the same vault that you used there in Personnel Security?

Ms. WETZL. Are you asking me?

Senator THOMPSON. Yes, please.

Ms. WETZL. It was my understanding that they had other storage areas, but they shared the vault with us, yes.

Senator THOMPSON. All right. When you say that they were next door, do you mean they were actually next door to you in your office or were you referring to the large vault area as next door?

Ms. WETZL. No. Records Management is—their office, suite of offices, is next door to ours.

Senator THOMPSON. Suite of offices right next door, and you periodically box things up and send over there to them?

Ms. WETZL. Yes.

Senator THOMPSON. Is that correct?

Ms. WETZL. Yes.

Senator THOMPSON. Did you ever send copies of these Secret Service lists that we have been talking about over there to them when they became outdated?

Ms. WETZL. I don't know. I don't recall. I don't think I made copies of the lists, but I—

Senator THOMPSON. No, I wasn't suggesting that, but apparently there were different lists that were sent to you on a monthly basis and there were a lot of lists around. I was just wondering, when they became outdated, whether you sent any of them over there.

Ms. WETZL. For the most part, when I would get an updated list, I would throw the old one in the burn bag, but there may have been some that I archived for whatever reason, like maybe I hadn't used them and they were in the vault area and so I boxed them up with some other paperwork.

Senator THOMPSON. All right. As I understand it, you saw the files left by Mr. Marceca and you immediately knew that something was amiss. You have also referred to a Secret Service list that Ms. Gemmell left behind.

Ms. WETZL. Yes.

Senator THOMPSON. Was that list still there at the time that you saw Mr. Marceca's files that he had left? Was it still in existence?

Ms. WETZL. Yes.

Senator THOMPSON. OK. Now, there is a separate list that might or might not, as I understand it, be a different one from Ms. Gemmell's list that Mr. Marceca may have been using to request the files from and we don't know where that one is. Is that correct?

Ms. WETZL. Right.

Senator THOMPSON. You don't think that it was the same list that was Ms. Gemmell's, but it could have been?

Ms. WETZL. Well, I don't know that it wasn't the same list.

Senator THOMPSON. OK.

Ms. WETZL. But I don't believe it was.

Senator THOMPSON. All right, so it could have possibly been the same list that Mr. Marceca used to obtain all those improper files? It is possible?

Ms. WETZL. Anything is possible, yes.

Senator THOMPSON. So you had the files there and you had the list there, the Gemmell list?

Ms. WETZL. Yes.

Senator THOMPSON. And you decided to destroy the Gemmell list, or put it in the burn bag. Is that correct?

Ms. WETZL. Yes.

Senator THOMPSON. Was that before or after you looked at those files to determine that there were files there that should not have been there?

Ms. WETZL. Let me tell you the order. I saw the files and realized that there was—I was going to have to look into this a little further. What I believe I did was went over to Tony's old work station, his old paperwork, and tried to figure out if there was anything I could use there. There wasn't that I can remember, but I cannot remember specifically looking at a list of his. That is the problem.

Senator THOMPSON. Anything you could use there in what respect?

Ms. WETZL. To continue the Update Project.

Senator THOMPSON. OK.

Ms. WETZL. To, you know, help me form a basis for the update—continuing the Update Project. There wasn't, so I believe that whatever was left of his I put in the burn bag. Then I thought, well, Tony made these mistakes; you know, I will be able to figure out from Nancy's work over at her station where this had been left, and I had believed relatively untouched, this list and also all these labels that were typed up, and also stacks of FBI request forms that had already been typed up and corresponded with the—seemed to correspond with the names on this list.

Well, when I looked at those, that paperwork and that list, I thought—I mean, there were just pages of names I didn't recognize and I believed to be previous administration, and I knew that the list was very outdated and that—and also the forms were outdated. It would be more trouble than it was worth to sort through them, so I put them in the burn bag.

Senator THOMPSON. OK, so you knew that list was outdated and you also knew that many of the files that Tony had left there were also outdated, right?

Ms. WETZL. Yes.

Senator THOMPSON. Did it occur to you—

Ms. WETZL. I didn't know which ones yet, though.

Senator THOMPSON. Well, did it occur to you to compare the list with the files to see whether or not the list that you had there was, in fact, a list of the files that Tony had obtained?

Ms. WETZL. It wasn't—there was no real reason I could see to do that. I just started from scratch.

Senator THOMPSON. Well, I understand that, but the only list that you knew about at the time the files were there was Ms. Gemmell's list. Any other list has been destroyed or otherwise we don't know where it is.

Ms. WETZL. Right. I see what you are saying now. No. I knew I could get a new list from the Secret Service and that it would be more updated than that very old one of Nancy's. I knew that list wouldn't be of any use to me.

Senator THOMPSON. How did you know a new list from the Secret Service would be the one that you wanted—

Ms. WETZL. Well, I knew it would be—

Senator THOMPSON [continuing]. When, apparently, it would have been the first one that would have been accurate from what we have been hearing here today?

Ms. WETZL. It would have been a lot closer to what I would have wanted.

Senator THOMPSON. I guess I am just asking the question—you had these files, you saw them, you saw that there were many, many more than what was appropriate. There were some names in there that you knew were not appropriate, and simultaneously you had a list that apparently had the same characteristics. It just occurs to me that you might have wanted to compare that list to the files to see whether or not you were holding a list of the files that you were going to have to be going through and working from, and that might have helped you determine what Tony had used to get those files.

Ms. WETZL. Well, at that point, I didn't really—the mistake had already been made. I really didn't care what—

Senator THOMPSON. You didn't attach any great—

Ms. WETZL [continuing]. Tony had done. I knew I would have to start over and make a new list.

Senator THOMPSON. The decision as to what to put in the burn bag and what to archive—is that something that you were instructed on or something you made a decision on yourself?

Ms. WETZL. It was something I made a decision on myself.

Senator THOMPSON. All right. After you discovered that you had files there that were improperly in the possession of your office, was the decision to send those to records management yours, or were you instructed on that?

Ms. WETZL. No. It was my decision.

Senator THOMPSON. All right. Now, this was the fall of 1994, is that correct?

Ms. WETZL. That is when I became executive assistant.

Senator THOMPSON. A year earlier, you had been an intern?

Ms. WETZL. Well, a year-and-a-half earlier.

Senator THOMPSON. A year-and-a-half. If I may ask you, how old are you, Ms. Wetzl?

Ms. WETZL. I am 25.

Senator THOMPSON. Twenty-five. You were 24 or 23 at that time, in the fall of 1994?

Ms. WETZL. The fall of 1994, I guess I was almost 24—23.

Senator THOMPSON. You were 23 at that time.

I guess my time is up.

Ms. WETZL. I didn't realize my age was relevant.

Senator THOMPSON [presiding]. Well, the point is—normally, it is not. The point is that we have a situation here where you are making the decision as to which documents to burn in your office. You are making a decision as to whether or not to turn over to the FBI improperly obtained files that as soon as Mr. Livingstone says he found out about it, he immediately turned over to the FBI. Right, Mr. Livingstone?

Mr. LIVINGSTONE. Yes, sir, that is correct.

Senator THOMPSON. All right, and at a time when there is another investigation going on, you make the decision not to give them to the FBI, but to give them back to Records Management. Mr.—

Ms. WETZL. That was not a decision that I made. That was what I believed to be standard practice. I had been told that any records

that we didn't consider prudent or we shouldn't have thrown away—if we were going to dispose of them, if we needed space in the vault, we sent them to Records Management and that was the only office we could send them to.

Senator THOMPSON. And you saw no—

Ms. WETZL. I never heard of anyone having—no one ever told me to send anything back to an agency that we had requested it from.

Senator THOMPSON. Had you ever heard of having files there from a former administration that you knew were not properly there that had been obtained improperly? Had that ever occurred to you in your year that you had worked there before?

Ms. WETZL. Excuse me. I knew it was a mistake when I found out that those files were improperly obtained.

Senator THOMPSON. All right, and you made the decision—

Ms. WETZL. But had the situation happened before? No. I don't know—

Senator THOMPSON. You made the decision to send them to Records Management. That is all I am saying. All I am saying—and I am not passing judgment on it—is that a lot of pretty crucial decisions were being made in an office handling some of those private and sensitive documents that this country has with regard to personnel, absent national security—a 23-year-old person who had been there a short period of time was making those decisions. That is the only point that I was making.

Mrs. Feinstein, did you waive? Have you had a second round?

Senator FEINSTEIN. I have no further questions of these witnesses.

Senator BIDEN. Would the Senator yield me a minute off of her time?

Senator FEINSTEIN. I would be happy to yield as much as you want.

Senator BIDEN. Neither of you may know the answer to this, but maybe you could tell me if this is true. I am told that the roughly 10,000 files, FBI files, summaries, that the Bush administration had on premises of the White House—when they left the White House, they boxed them up and they did not send them back to the FBI. They sent them to an archives, a different archives, but they sent them to the National Archives. Is that correct, or do you know that?

Mr. LIVINGSTONE. Sir, it was my understanding from conversations with Ms. Nancy Gemmell—

Senator BIDEN. Who will testify next, I might add.

Mr. LIVINGSTONE. Yes, sir, and I am—it was my understanding that there is a couple of significant points that you have brought up, and I will make them brief; one, that the files from the previous administration were sent—

Senator BIDEN. We are talking about FBI summary files?

Mr. LIVINGSTONE. The whole file—IRS, FBI, everything inside of it—

Senator BIDEN. Got you.

Mr. LIVINGSTONE. Anything you can imagine that would be in a security file—

Senator BIDEN. Right.

Mr. LIVINGSTONE [continuing]. To include IRS and FBI, were packed up by a bunch of Marines or Government employees, put into trucks in the last couple days of the administration and hauled off to the Archives.

Senator BIDEN. What archives, the National Archives?

Mr. LIVINGSTONE. I believe the National Archives, for safe keeping until Mr. Bush's library or some similar institution could be done, and it is also important—along that same time, I asked about these files and I asked about, you know, whether files were returned to the FBI, and they said no. Once we got files, that we considered the property of the White House and then our job was to safeguard them and, at the end of the administration, give them to Records Management and they would determine where it would be sent after that.

Senator BIDEN. All right. Now, one of the things I have never been able to understand, I say to my friend from Tennessee, and I asked my staff is why—if I had worked in the White House and my FBI file was there, why, when I no longer worked there and the President left, my file then goes to a Presidential library.

Senator THOMPSON. Because the law requires it.

Senator BIDEN. Well, I can understand, then, why Ms. Wetzl, if she knows that these files got sent to the National Archives—they were the property of the White House; no one sent anything back to the FBI—why you might conclude that you should send them to the archives within the White House because they were—whether they were appropriately or inappropriately, from your perspective, I assume, thought to be property of the White House.

Ms. WETZL. Correct.

Senator THOMPSON. Well, Senator, the distinction, of course, is a valid point to make. It is one side of the argument. The distinction is the ordinary, regular course of business that happens every time the administration changes versus an extraordinary situation once you know that you have sensitive files that you should not have. That is not what is contemplated by the law, and I thought everyone acknowledged now that the proper thing to do, once it was discovered, was to turn them back over to the FBI.

Senator BIDEN. Well, I think we all—

Senator THOMPSON. I can understand why there might be some misunderstanding about it, but there is really not much question as to what the proper thing to do was. And I was just curious as to why someone didn't ask somebody what you do under those circumstances and all these decisions were made by people who—

Senator BIDEN. Well, I thought Ms. Wetzl answered that, but I will ask her again on the time yielded to me, and that is did anyone tell you—or how did you arrive at the conclusion that, from your perspective—you are testifying under oath—you thought the appropriate thing to do was to send these files that had once been in that same vault, but did not warrant being in the vault any longer because they didn't work for the then President—they worked for the last President—what you made you conclude that—when you concluded they should not be in the vault that you had control over, or your office had control over, that you should send them to the White House archives room instead of back to the FBI? What made you reach that decision?

Ms. WETZL. I didn't even think about sending them back to the FBI. For better or for worse, those—inappropriately or appropriately, those files were at the White House and they were, therefore, I believed, part of Presidential papers. Whether they should be or not, they were, and how to dispose of Presidential papers was to send them to Records Management.

The CHAIRMAN. Well, let me just say that these files were inappropriately obtained. I mean, you miss the ball if you worry about what archives they are going to. The fact is they were inappropriately obtained.

Senator DeWine?

Senator DEWINE. Thank you. Mr. Livingstone, you told me earlier this morning that when you volunteered—I think you said you volunteered—when you volunteered for then Governor Clinton, sometimes you would do advance work when he would come to Washington. I assume that you had occasion to see him during those trips, had some contact with him.

Mr. LIVINGSTONE. I would like to be very specific on that response. Usually, the requests for my assistance were that the Governor would be going to a fundraiser or something like that and need a car or driver, or something like that. The extent of my contact, that is where it was.

Senator DEWINE. You might drive him some time. You might do other advance details for him. I mean, just whatever was required, I assume.

Mr. LIVINGSTONE. Well, it wasn't whatever was required. It was specifically advance.

Senator DEWINE. Include driving. You might drive him. You might do other things.

Mr. LIVINGSTONE. Or get a driver, find a volunteer.

Senator DEWINE. Let me talk a moment, if I could, and ask you a couple questions about the general issue of background checks. Once a background check is done, if there is a problem, something is discovered that maybe doesn't look quite right, I assume that there is then a face-to-face interview. I mean, is that—that would occur, would it not?

Mr. LIVINGSTONE. As I said, sir—

Senator DEWINE. Explanation of why and—

Mr. LIVINGSTONE. As I said, just to help explain it, the BI is first received by a counsel, an attorney in counsel's office. Speaking in 1993, that would be Mr. Bill Kennedy. Mr. Kennedy's procedure was to review the file, make notes, if necessary, and then send them to me.

Senator DEWINE. You testified earlier this week—and I want to get a little bit into you specifically now so I can understand it. You testified on Wednesday in front of the House committee, "As a course of my job, it was very common for me on a daily basis to talk with individuals about information in their background." Another time in an interview, a deposition, you said, "My job specifically was to determine suitability for employment."

I want to talk a little bit about your employment. You told us earlier that you had talked with Mr. Kennedy on several occasions prior to actually finally being approved. You have described one of those meetings as him describing it as a come-to-Jesus conversa-

tion where you got into some of the potential problems that you had, and I don't want to in any way violate your privacy, but all of this has already come out. Let me just give you the summary.

Already at that point in your background investigation, what you talked with Mr. Kennedy was this whole issue about Sears, which you describe as improper exchange of an item; the question about the misrepresentation, or the alleged misrepresentation of your education, the problem you had with a former employer about that issue anyway; also, the fact, as you describe it, that, I used different types of drugs up until about 1985.

Now, all of that was known to Mr. Kennedy when you discussed—you had this come-to-Jesus discussion with him, is that correct? I assume you covered those issues, among other things.

Mr. LIVINGSTONE. Senator, you are asking me to think about and reflect on testimony which I don't have in front of me, first of all. And, second, I don't mean to be in any way out of line because I understand—and I will for the rest of my life—and I am sure in my obituary I will be referred to as the guy from file whatever, and I will live with that and I accept that. But I don't think it is appropriate to continually—for me to be the only person in this whole process to have his background investigation revealed before the world, and I don't understand—

Senator DEWINE. Mr. Livingstone, there is nothing that I have said that has not already been reported and been out, and my purpose is not to go through it. My point is simply I am trying to determine what Mr. Kennedy knew at the time he made the final decision to sign off on you staying at the White House. That is really the nature of what I am trying to get at. Mr. Kennedy is not in front of us today. You are. It is not to drag your record through again. It is the state of mind of Mr. Kennedy and what he knew at that particular point of time, which I think is relevant.

Mr. LIVINGSTONE. I assure you—and I didn't mean to be rude in any way, sir.

Senator DEWINE. No, no, no, I don't take it that way and I don't mean to go through this again. I am trying to get at his state of mind and what he knew.

Mr. LIVINGSTONE. I assure you that Mr. Kennedy knew the matters that you brought up, and when I said I remember Mr. Kennedy referring to come to Jesus, that is when we were deciding at the completion of my background check whether or not I was suitable for my employment. I—

Senator BIDEN. Background check by the FBI?

Mr. LIVINGSTONE. Yes, sir, my background check by the FBI, which was completed, as I recall it, one month after my employment, so it would have been in March 1993.

As I recall the conversation, sir, he needed to review it. He shared with me that he asked the FBI agents involved who I would have to work with on a daily basis, based on the information that you just described, can you work with this individual in this capacity. And not only did he tell me that they said they could; those agents told me they could.

Senator DEWINE. What else did you discuss with him, with Mr. Kennedy in regard to your background? Anything else, anything else that was troubling him?

Mr. LIVINGSTONE. I did my best, sir, to make sure that Mr. Kennedy knew of the mistakes that I had made in my past, the Sears job that you referred to 15 years ago, and my drug use which—by the way, sir, we encourage people to tell the truth, and I did.

Senator DEWINE. I fully appreciate that. I am not, again, trying to get into it. I just want to know what he knew. Now, I see my time is almost up. Let me just ask, that was the first time that you had had any discussion with anyone about that type of a conversation, is that right? In other words, you were already hired. The question was whether you were going to be permanent at that point. Had you had a similar discussion with anybody before that?

Mr. LIVINGSTONE. It is possible. I don't know.

Senator DEWINE. You don't recall?

Mr. LIVINGSTONE. No, sir.

Senator DEWINE. Mr. Chairman, just to follow up with one additional question, if I could just finish.

The CHAIRMAN. OK.

Senator DEWINE. Mr. Livingstone, I am still a little confused about the division of responsibility between your office and the general counsel's office regarding looking at these FBI files, and I read you the quote that you said, statements that you made before about the fact that you—"As a course of my job, it was very common for me on a daily basis to talk with individuals about information in their background."

Now, was there one level of employees that you would sort of be the person who was inquiring into these things and maybe a different level of employees that general counsel would do that? Is that right or do I have that wrong?

Mr. LIVINGSTONE. Senator, I am going to try to answer your question. To me, there were a few questions in there that without, again, having the transcript of what you are talking about that I said, according to you, in front of me—

Senator DEWINE. And what I—excuse me. What I just read to you—I just watched a tape of it last night and wrote it down, what you said, when, and that is the only place I got that.

Mr. LIVINGSTONE. I believe that, as I have testified many times, that Mr.—speaking in 1993, of course, Mr. Kennedy would first look at the BI's. I am not aware if Mr. Kennedy chose to speak to other individuals without talking to me. But very often if there was a problem—and I described it fairly innocuous things—he would direct me to get a resolution that would be agreeable to him and the White House, report it to him, and then the person's pass would be approved.

Senator DEWINE. But there was no difference in how it was handled with the level of the job? For example, an usher in the White House—there is an article in the paper this morning. I mean, for example, were you involved in looking at files on ushers at the White House? Do you recall?

Mr. LIVINGSTONE. I do not.

Senator DEWINE. You don't recall?

Mr. LIVINGSTONE. No, sir.

Senator DEWINE. OK, but that would be maybe one level. Maybe an assistant secretary would be maybe at a different level?

Mr. LIVINGSTONE. All right, sir, I can answer that question specifically.

Senator DEWINE. Is there a distinction between how you all handled that?

Mr. LIVINGSTONE. Presidential appointments—

Senator DEWINE. OK.

Mr. LIVINGSTONE [continuing]. That would be Senate-confirmed people, things like that—handled by a whole other office within counsel's office. I did staff, volunteers, interns, detailees, assignees—excuse me, not assignees—and people that had passes for regular access to the White House, the Executive Office of the President and the White House.

Senator DEWINE. OK, good, thank you. Thank you, Mr. Chairman.

Mr. LIVINGSTONE. Contractors as well.

The CHAIRMAN. Senator Abraham, you will be our final questioner on this.

Senator LEAHY. I thought we had another round.

The CHAIRMAN. You haven't—no, we are not going to—

Senator LEAHY. I haven't done my second.

The CHAIRMAN. I didn't realize. You hadn't had your second round?

Senator LEAHY. No, sir.

The CHAIRMAN. We will go to Senator Leahy, then.

Senator LEAHY. I have just been sitting here in my usual fashion quietly waiting.

The CHAIRMAN. Senator Abraham will still be our final questioner, but after Senator Leahy, of course.

Senator LEAHY. Ms. Wetzl—

The CHAIRMAN. Excuse me. By the way, we will keep the record open for written questions to the witnesses.

Senator LEAHY. Ms. Wetzl, I just want to make sure I understand this from your testimony, and I apologize that I have had to leave for part of this, but as you know, we have a bill on the floor. As sometimes happens, I had both an amendment there for something dealing with land mines and then another matter. So some of this may have been answered, so bear with me if it is repetitious.

Nancy Gemmell left the White House in August 1993, is that correct?

Ms. WETZL. Yes.

Senator LEAHY. And then you found an outdated list on her desk in the fall of 1994 when you picked up the Update Project about 14 months later. Is that correct?

Ms. WETZL. Well, it is not like I discovered it. We knew her—she had left the materials in the back corner of the vault.

Senator LEAHY. Sure, but what I am saying is that is when you first saw that list?

Ms. WETZL. Paid attention to it, yes.

Senator LEAHY. Or paid attention to it. Had you seen it before then?

Ms. WETZL. I can't recall specifically her list. I knew there was some paperwork back there.

Senator LEAHY. Certainly, it wasn't something that—well, I don't want to put words in your mouth. There were materials left in her desk. Her work area had not been cleaned out, everything taken, when she left. Is that correct?

Ms. WETZL. Well, at that point before she left, she wasn't working for the most part at a desk. She was working in the vault at like a counter, so there wasn't a lot of personal effects or, you know, paper clips or anything like that. It was just this specific stack of paperwork that was left.

Senator LEAHY. But in the fall of 1994, you picked up the Update Project. At that time, you picked up an outdated list on her desk?

Ms. WETZL. Right.

Senator LEAHY. Am I correct that there were other things on the desk? That wasn't the only item sitting on the desk?

Ms. WETZL. Yes. There was other paperwork on that area, that counter.

Senator LEAHY. And is it possible, in your estimation, that that item could have been there from the time she left the White House in August 1993?

Ms. WETZL. Yes.

Senator LEAHY. But you don't know for sure?

Ms. WETZL. In that—

Senator LEAHY. I mean, you didn't look at the desk and say, oh, I recognize that; every time I have come in here I have seen exactly that list sitting here?

Ms. WETZL. No. The area that it was in, that it was with all the other paperwork, was Nancy stuff.

Senator LEAHY. OK. Now, did Mr. Marcea sometimes use her old desk when he worked, or was her desk just left with all her stuff on it for nearly a year?

Ms. WETZL. As I said, it wasn't a desk. It was a counter—

Senator LEAHY. Well, a counter, then.

Ms. WETZL [continuing]. That she pulled a chair up to in the back, and, no, he didn't work there.

Senator LEAHY. Did anybody, to your knowledge, use that counter when she left?

Ms. WETZL. Yes.

Senator LEAHY. And who would use it after she had left?

Ms. WETZL. The entire office, for various reasons. It wasn't a single person's work station anymore after she left.

Senator LEAHY. So whether she left papers on there or not, what you saw when you went in there in the fall of 1994 could be something different than what she had left or could be the same thing?

Ms. WETZL. I don't believe that that is the case.

Senator LEAHY. Which?

Ms. WETZL. Her stuff was at the end of the counter and it sat there, and there was plenty of extra room on the counter that other people used and it sat there for a very long time.

Senator LEAHY. And it appeared to be the same thing all the time to you?

Ms. WETZL. From what I can recall, yes.

Senator LEAHY. OK, but other people would certainly have access to it?

Ms. WETZL. Yes.

Senator LEAHY. You said you didn't see on Mr. Marceca's desk any separate computer list in the fall of 1994 when you picked up the Update Project, is that correct?

Ms. WETZL. When I—after Tony—when I picked up the project? Senator LEAHY. Yes.

Ms. WETZL. No. I said I don't recall exactly what was left that Tony had left.

Senator LEAHY. OK. Let me ask you this. Did you ever hear anybody at the White House in connection with any of the materials you have handled or testified you have handled—ever hear them use the term "enemies list?"

Ms. WETZL. Never.

Senator LEAHY. Ever hear them use the term "friends or foe" list?

Ms. WETZL. No, never.

Senator LEAHY. Or refer to them as actual or potential campaign material?

Ms. WETZL. Never.

Senator LEAHY. Mr. Livingstone, you have heard discussed these lists that we have talked about. Did you ever hear anybody at the White House refer to them as an enemies list?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Ever hear them refer to them as kind of a friends or foe list?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Did you ever hear them refer to them as material to be used in a campaign?

Mr. LIVINGSTONE. I just want to make sure you are specifically talking about these 400—

Senator LEAHY. That is right.

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Obviously, it was not unheard of to hear politics talked about at the White House?

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. But not in connection with these lists?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Did I drive the chairman out? I didn't mean to do that. Mr. Chairman, I just want you to notice I am yielding back my time.

The CHAIRMAN. Oh, that is great. That is one of the great boons here.

Senator Abraham, then.

Senator ABRAHAM. Thank you.

The CHAIRMAN. Thank you, Senator Leahy.

Senator LEAHY. I do want to thank the witnesses. I do want to note one thing. Mr. Livingstone, earlier I had—you had answered all my questions my first go-around very honestly, and I made some comment about you. I wanted to make sure you hadn't started the fire at the Treasury, and I think you understood that at that point it was in connection with something else that had been said and it was done in a matter of levity. Apparently, I got a call from the office, somebody saying I should not accuse you of doing that without more facts to base it on. I will state for the record it was a joke, and I think you understood it as a joke.

Mr. LIVINGSTONE. Yes, sir, I did.

Senator LEAHY. Thank you.

The CHAIRMAN. We have to have our counterpart in the Senate to match the House.

The CHAIRMAN. Senator Abraham.

Senator ABRAHAM. Thank you, Mr. Chairman.

Mr. LIVINGSTONE. I didn't take it that way.

Senator ABRAHAM. Thank you. Mr. Livingstone, in my earlier questions I asked you about what happened when you were aware that there were these—that some files had been obtained that were unnecessary or shouldn't have been there, and you indicated that whenever that occurred, when Ms. Wetzl got that information to you, you didn't think anything of it because you didn't realize those were files from a previous administration. Is that correct?

Mr. LIVINGSTONE. Yes, sir, I believe that is what I said.

Senator ABRAHAM. And that when you finally did find out just a few weeks ago, you took action. You contacted appropriate authorities, and so on, and set in motion a sequence of events which had the FBI investigation, and so on. Is that correct?

Mr. LIVINGSTONE. Yes, sir.

Senator ABRAHAM. All right. Let me ask our other witness, does that correspond to your recollection of what you indicated to Mr. Livingstone that you did not inform him that these were files of a previous administration?

Ms. WETZL. My recollection is I said I am working on the Update Project; did you know Tony ordered all these files that we don't need? And he said, oh, Tony, or something like that, and that was it.

Senator ABRAHAM. You never said previous administration?

Ms. WETZL. I don't believe I did.

Senator ABRAHAM. All right.

Ms. WETZL. I just—it was a general comment.

Senator ABRAHAM. All right. In your deposition to the House on June 17, you said to the inquiry there, "I told Craig Livingstone that I believed Tony had ordered the files we didn't need," and may have said we have Marlin Fitzwater's file in there. I said, "Craig, Tony ordered all these files of previous administration people that we don't need." Which is correct?

Ms. WETZL. Well, did I say "quote" in my deposition? I don't know that I said "quote."

Senator ABRAHAM. You are quoted in your—no, no. The quotes marks are—I am reading off the deposition here.

Ms. WETZL. Right, OK. So I wasn't saying—

Senator ABRAHAM. It quotes you as saying—

Ms. WETZL [continuing]. I said Craig "quote." I—

Senator ABRAHAM. Don't confuse the issue. Did you say or did you—

Ms. WETZL. No. I am trying to clarify it.

Senator ABRAHAM. Well, I am putting the quote marks in because they are in here. You are quoted as saying—and I put them in for that purpose—

Ms. WETZL. And I am saying—

Senator ABRAHAM [continuing]. Because they were typed on here.

Ms. WETZL. And I stand by what my deposition says and what I am saying here today that I mentioned to Craig that Tony had ordered all these files by mistake. I do not know the exact wording of what I asked.

Senator ABRAHAM. Well, in your—

Ms. WETZL. And I may even have said in the deposition—and I will say it now—I may even have said we have Marlin Fitzwater's file back there because that is the—

Senator ABRAHAM. In the deposition—

Senator LEAHY. Mr. Chairman, I just might ask if perhaps the witness could at least have the deposition in front of her if she is going to be questioned from the deposition.

The CHAIRMAN. Take the deposition down to Ms. Wetzl.

Ms. WETZL. Sure.

The CHAIRMAN. She certainly deserves to have that in front of her.

Senator ABRAHAM. Will my time be held here, Mr. Chairman?

The CHAIRMAN. I will give you some extra time. Please, if you can, Senator, refer to the pages you are talking to and let's give her the opportunity to respond.

Ms. WETZL. Are you talking about line 14?

Senator ABRAHAM. I am talking about line 16.

Ms. WETZL. Oh, well, OK. Starting with 14, it says "I told Craig Livingstone that I believed Tony had ordered files we didn't need, and I may have said we have Marlin Fitzwater's file in there."

Senator ABRAHAM. Read on. The next part is what I am referencing.

Ms. WETZL. "I said, 'Craig, Tony ordered all these files of previous administration people that we don't need.'" I am saying—what I meant to say was I generally said—I don't know my exact words. I don't know exactly what I said.

Senator ABRAHAM. Well, I assume this is typed verbatim.

Ms. WETZL. In the same sense—

Senator ABRAHAM. This is fairly significant because either Mr. Livingstone was informed that previous administration people's files were in there or he was not. Now, if he was informed that they were in there, then the actions he only took recently, according to him, should have been taken at the time you made this information known to him. If you didn't say that, then he would have been presumably more justified in not investigating further.

I am just saying in your deposition, which I assume was taken under oath, you said that you told him, Tony ordered all these files of previous administration people that we don't need.

Ms. WETZL. Well, previous administration is also a general term and it also means people who did stay. Do you see what I am saying?

Senator ABRAHAM. But you said a minute ago—I mean, when I first asked you here, you did not—

Ms. WETZL. I honestly do not remember my exact words. All I remember is saying—making some comment to Craig about how Tony had ordered all these files. I don't know if I said previous administration or not, but if I did say previous administration, previous administration is a general term that was used to describe career employees, including those who stayed and were held over.

So this argument over the term previous administration is—I don't see the relevance.

Senator ABRAHAM. Well, you may not. I do, because I think that when I asked Mr. Livingstone whether he would have acted as he did just a few weeks ago were he aware that previous administration people's FBI files were on hand, he said absolutely, that he would have done so. I then asked you if you had informed him of that. Today, you are saying you did not, and yet on June 17—

Ms. WETZL. My answer, in my opinion, is the same as it always has been. I don't remember my exact words. However, I remember commenting to Craig that Tony had ordered files that we did not need, and I may even have said Marlin Fitzwater's file is in there, but I don't know that I said that. The only reason I said I may have said is because it jumped out at me.

Senator ABRAHAM. All I have to go on is the statement which you swore to that said specifically files of previous—

Ms. WETZL. And also the statement I am swearing to today.

Senator ABRAHAM. Right, and if they are inconsistent, it seems to me that is fairly relevant for this committee to know.

Ms. WETZL. I don't see the inconsistency.

Senator ABRAHAM. Well, I do.

Mr. Livingstone, I want to ask you this question. You indicated that you on various occasions took files from this vault to Mr. Kennedy. Is that correct?

Mr. LIVINGSTONE. Actually, sir, I think I said that we—in the proper course of business, files would be transported from their place of safekeeping, our vault, to counsel's office. At that time, it was Mr. Kennedy's office.

Senator ABRAHAM. Right, or I mean to people in the counsel's office.

Mr. LIVINGSTONE. And specifically, sir, I rarely took files to or from his office. Someone in my office would do that.

Senator ABRAHAM. Other people did, is that correct?

Mr. LIVINGSTONE. Absolutely.

Senator ABRAHAM. How many different people might have been contacted by people in the counsel's office and asked to bring files?

Mr. LIVINGSTONE. I don't know; people that worked for me.

Senator ABRAHAM. A large number? I mean, four, five, seven?

Mr. LIVINGSTONE. I think four or five sounds reasonable, sir.

Senator ABRAHAM. OK. The reason I am asking you this is because earlier I think we left open the question of whether or not you had taken any of these files that were improperly in the vault to the counsel's office. You indicated that you did not believe you had taken any of them up there, is that correct?

Mr. LIVINGSTONE. Yes, sir.

Senator ABRAHAM. But you can't speak, obviously, for the other people who took files up to the counsel's office or elsewhere, is that correct?

Mr. LIVINGSTONE. That is correct.

Senator ABRAHAM. So others could have taken some of these files. We obviously don't know that, and I am not acting on any information. I am just trying to ascertain whether there were other people we should ask about that in order to—

Mr. LIVINGSTONE. I don't have any information that would lead me to believe that that happened.

Senator ABRAHAM. Right, but have you queried those other individuals?

Mr. LIVINGSTONE. We—no, I have not.

Senator ABRAHAM. I realize you don't have any information, but I am just wondering whether that answer is based on an investigation you conducted or just the fact that nobody came up and said, I am taking one of the improper files to the counsel's office. I assume you have not conducted any inquiry that would give you information as to whether others had done so.

Mr. LIVINGSTONE. I have not.

Senator ABRAHAM. OK. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you. Now, I would like to bring this to a close. We will keep the record open so anybody on the committee can send written questions to you.

Senator BIDEN. Mr. Chairman, one question of clarification.

The CHAIRMAN. OK, just one because I want to get to the next panel.

Senator BIDEN. Just one. Ms. Wetzl—I would like Senator Abraham to listen to this, if he could. Senator Abraham, would you listen to this question because I want to make sure I am not confused?

In your deposition, you acknowledge that you told Mr. Livingstone that there were files that shouldn't have been requested, by whatever verbiage you used. Is that the idea you communicated to him?

Ms. WETZL. Yes.

Senator BIDEN. And you said that. Today, what did you say? What is your recollection? Did you inform him that there were files that Mr. Marceca had asked for from the previous administration that shouldn't have been asked for?

Ms. WETZL. All I can remember is saying something like, Craig, Tony ordered all these files we don't need, and I do not remember his reaction. I don't even think there was much further conversation about it.

Senator BIDEN. OK.

Ms. WETZL. It was a remark.

Senator ABRAHAM. Mr. Chairman, can I just followup?

The CHAIRMAN. Yes.

Senator ABRAHAM. I just want to say to the witness I am not trying to suggest here that I hold you responsible for what Mr. Marceca acquired or anything else.

Ms. WETZL. Oh, I am aware of that, sir.

Senator ABRAHAM. My concern has been from the beginning what happened inside the White House when it was discovered that files that should not have been in that vault were, in fact, there, and it seems to me fairly relevant as to whether or not an effort was made to discover the truth and act appropriately or not. The only way we can sort of get to the heart of that part of this inquiry is to find out when the discovery was made and at what level.

Mr. Livingstone has said that he did not believe or know until just a few days ago that previous administration files were there. The sworn deposition, however, of Ms. Wetzl here indicates that

she, at least on June 17, says that she informed him that previous administration files that we don't need are in there. And so I am just trying—I mean, that is the point of my inquiry.

Senator BIDEN. Senator, I think the point of your inquiry is absolutely appropriate.

The CHAIRMAN. I think it is, too.

Senator BIDEN. I just want to make it clear—get it clear to me whether or not Ms. Wetzl is saying anything inconsistent, and it seems like she is not. She said she told—she said in her deposition she told him and she is saying here she told him.

Senator ABRAHAM. Well, I don't agree with that, Senator, but I—

Senator BIDEN. Well, why don't you? That is why I am confused.

Senator ABRAHAM. Because the question that it seems to me that would trigger further inquiry by Mr. Livingstone, and presumably the information being passed along to other authorities, is whether or not files that were inappropriate were on hand. He had said earlier when I asked him on my first round—

Senator BIDEN. Well, that is his problem. That is not hers.

Senator ABRAHAM. When I asked him on my first round, I asked whether or not he would have acted that way if he had known previous administration files were there, and he said he would have acted accordingly.

Senator BIDEN. Well, I think you are correct about his—

Senator ABRAHAM. So I am trying to find out when he found—when he discovered that.

Senator BIDEN. When he found out, but she is being consistent, is the only point I am making. Whether he is or not, that is another question.

Senator ABRAHAM. But she is not being consistent if 2 weeks ago she said that she told him previous administration files were there and today she says otherwise.

Senator BIDEN. No, she is not saying otherwise.

Ms. WETZL. I am not saying otherwise.

Senator BIDEN. She is not saying otherwise. That is the point I am trying to make.

Ms. WETZL. I am saying that the term previous administration implies people who are held over who are still active passholders, and you could use it—you are using it in a narrower sense of Republican officials and that is not what I mean when I say previous administration employees, and I don't know if I used that term.

The CHAIRMAN. OK. Do you want to make one last comment, Mr. Livingstone?

Mr. LIVINGSTONE. Very briefly, Mr. Chairman, just for a point of clarification for Senator Abraham. When the White House learned that we had the files incorrectly, the White House did the right thing. They immediately called the FBI, or within hours called the FBI. They came and took the files. I did not know, nor did anyone else at the White House know the significance of these files being people that never served at the White House until that time, sir. I inferred from Ms. Wetzl's comment that these were people that had transitioned in and out. I did not see the significance. I did not understand that.

The CHAIRMAN. All right. We are going to hold the record open—

Mr. LIVINGSTONE. Thank you.

The CHAIRMAN [continuing]. So anybody who wants to file interrogatories can. We will reserve our rights to call both of you back if we need to—

Mr. LIVINGSTONE. I would be happy to return.

The CHAIRMAN [continuing]. As we continue to explore this, and we appreciate your cooperation today.

Ms. WETZL. Thank you.

The CHAIRMAN. Thank you so much.

Mr. LIVINGSTONE. Thank you, gentlemen and ladies.

The CHAIRMAN. I would now like to introduce the members of our second panel. Arnold Cole and Jeffrey Undercoffer are special agents with the Secret Service. James Wolfe is Director of Security at the Senate Select Committee on Intelligence. Nancy Gemmell is a former staffer with the White House Office of Personnel Security. Mary Beck is the Associate Director for Human Resources Management with the Office of Administration at the Executive Office of the President, and Charles Easley is Director of White House Security.

Now, I would like to welcome them all and ask everybody to stand so they can take the oath, if you will. Do we have everybody? Is Ms. Beck here?

Mr. LIBOW. Senator, Ms. Beck has stepped out for a moment.

The CHAIRMAN. Well, let me swear you in and then we will swear Ms. Beck in separately.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. COLE. I do.

Mr. UNDERCOFFER. I do.

Mr. WOLFE. I do.

Ms. GEMMELL. I do.

Mr. EASLEY. I do.

The CHAIRMAN. Thank you very much. Let's start with Mr. Cole. If any of you have statements, I hope you can keep them quite succinct, and we will start with you, Mr. Cole, and go right across the table, if we can. If Ms. Beck walks in, I will interrupt you, if I can. No disrespect, but I will swear her in at that time so I won't forget to do it, OK?

Ms. LIBOW. Ms. Beck is in the room.

The CHAIRMAN. Oh, is she? Ms. Beck, let me swear you in, OK? Will you remain standing? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. BECK. I do.

The CHAIRMAN. Thank you.

Mr. Cole, we will turn the time to you.

PANEL CONSISTING OF ARNOLD COLE, SPECIAL AGENT, U.S. SECRET SERVICE; JEFFREY UNDERCOFFER, U.S. SECRET SERVICE; JAMES A. WOLFE, DIRECTOR OF SECURITY, SENATE SELECT COMMITTEE ON INTELLIGENCE; NANCY GEMMELL, FORMER STAFFER, WHITE HOUSE OFFICE OF PERSONNEL SECURITY; MARY BECK, ASSOCIATE DIRECTOR FOR HUMAN RESOURCES MANAGEMENT, OFFICE OF ADMINISTRATION, EXECUTIVE OFFICE OF THE PRESIDENT; CHARLES EASLEY, SECURITY OFFICER, EXECUTIVE OFFICE OF THE PRESIDENT; AND JOHN LIBONATI, SUPERVISORY SPECIAL AGENT, U.S. SECRET SERVICE

TESTIMONY OF ARNOLD COLE

Mr. COLE. Yes. I have a brief statement.

The CHAIRMAN. Mr. Cole is a special agent with the Secret Service.

Mr. COLE. That is correct. Mr. Chairman, members of the committee—

The CHAIRMAN. If you could pull your mike just a little bit closer, I would appreciate it.

Mr. COLE. Mr. Chairman, members of the committee, my name is Arnold Cole. I have served as a supervisor of the White House Access Control Branch from 1992 to the present. Seated next to me is Special Agent Jeff Undercoffer, who has been assigned to the Access Control Branch since 1994, and seated behind me is Supervisory Special Agent John Libonati, who served in my current position from 1989 to 1991.

Mr. Chairman, I would like to begin by relating to the committee the chronology of significant events which occurred in the time period from December 1992 through the present and which demonstrate a consistent, comprehensive effort to educate the new administration on access and security issues at the White House complex.

In December 1992, I met with Ms. Alexis Herman, a member of the Clinton transition team, in an effort to identify key points of contact to begin the process of educating the new administration to security and access procedures at the White House complex. Ms. Herman identified Mr. David Watkins as the primary point of contact for these issues.

On January 12, 1993, I began discussions with Mr. David Watkins, Assistant to the President for Management and Administration, and his staff. During the week leading up to the inauguration, we had numerous discussions concerning White House security and access. These discussions resulted in the creation of this booklet, "Welcome to the White House," which outlines the various security procedures and general information.

Continuous and thorough briefings concerning access issues took place almost daily up to inauguration day. This briefing process in and of itself was literally a full-time function for all personnel in the Secret Service Access Control Branch. As a result of these efforts, it is evident that the White House staff was well aware of the constant availability of the Secret Service, particularly the Access Control Branch, for the purposes of facilitating the transition and resolving any problems or questions.

Staff from the previous administration who had been assigned to the Office of Personnel Security were Jane Dannenhauer and Nancy Gemmell. They remained on hand to assist in educating their successors and worked closely with new staff and the Secret Service Access Control Branch to ensure a smooth transition.

During the period of January and February 1993, I continued on a routine basis to advise Mr. David Watkins and Janet Green on the importance of identifying Ms. Dannenhauer's replacement in a timely fashion, knowing the importance of establishing pass issuance and other security-related issues.

During February 1993, I was introduced to Craig Livingstone, Jane Dannenhauer's successor as Director of the Personnel Security Office. Throughout the month of February 1993, I met frequently with Mr. Livingstone to discuss all processes related to White House access and pass issuance.

On March 31, 1993, I convened a meeting of security officers to meet new members of the administration to discuss any security issues at the White House complex. Amongst the attendees were William Kennedy, Craig Livingstone, George Saunders, and Chuck Easley, to include FBI agents Dennis Sculimbrene, Gary Aldrich, and Carolyn Weber. These security meetings were held on a monthly basis through November 1993.

I can, Mr. Chairman, submit for the record memoranda which I have with me which indicate the dates and times of these briefings.

The CHAIRMAN. Without objection, we will put them in the record.

[The memoranda referred to was not available at presstime.]

Mr. COLE. I assure you, Mr. Chairman, that these are but a few examples of activity which clearly established a constant pattern of briefings and accessibility by the Secret Service personnel to the White House staff. There were frequent and thorough briefings provided to Mr. Livingstone and others throughout the year.

In our exhaustive attempts to find any and all information which might shed light on the claim than an outdated 1993 access list contributed to the inappropriate FBI file request, my staff just several days ago discovered an original active passholder printout which we have with us of White House operation personnel dated July 8, 1993. The time period of this printout is significant.

In order for the Secret Service list to be flawed as claimed, this list should have contained the names of all 377 passholders inactive from the list of 477 and listed them as active. It does not. I want to make clear that active passholder lists were provided to the Office of White House Personnel Security on nearly a weekly basis. I cannot find any reason why current lists would not be used for that office's purposes.

Additionally, it has been stated by staff assigned to that office that they routinely reviewed this document and reported desired changes to my office. That is exactly the reason why we provide such lists. I expressed clearly and frequently that Secret Service print-outs should only be used for access purposes. My colleagues can explain in further detail the significance of the July 1993 list and other technical mathematical analysis.

Mr. Chairman, my colleagues and I thank you for this time.

The CHAIRMAN. Thank you, Mr. Cole.

Mr. Undercoffer.

Mr. UNDERCOFFER. Sir, I have not prepared an opening testimony.

The CHAIRMAN. That is fine.

Mr. WOLFE.

TESTIMONY OF JAMES A. WOLFE

Mr. WOLFE. Mr. Chairman, I have a more comprehensive statement that I will submit for the record and I will summarize my remarks.

The CHAIRMAN. We will place it in the record and appreciate your summary.

Mr. WOLFE. Thank you, Mr. Chairman, ranking member, members of the committee. My name is James Wolfe. I am the Director of Security for the Senate Select Committee on Intelligence. For the past 9 years, I have been a staff member of the Senate Select Committee on Intelligence, the last 6 of which I have been in my current position. In this role, I am uniquely familiar with the day-to-day operations regarding the secure handling, tracking, and storage of some of the most highly classified information that is provided to the Congress.

Moreover, as security director, I am the primary contact for the committee as the recipients of the results of sensitive background investigations that are initiated by the Select Committee conducted by the Federal Bureau of Investigation of committee staff or potential staff.

In March 1994, Senator DeConcini wrote to Mr. Phil Lader, White House Deputy Chief of Staff, regarding a recent meeting on White House security matters and made an offer to make me available for the purpose of reviewing White House security procedures. I would like to emphasize that in May 1994, at the direction of former Senator Dennis DeConcini, who was then chairman of the Senate Intelligence Committee, as well as the chairman of the Appropriations Subcommittee for which jurisdiction of White House appropriations come under, I was asked to meet with White House officials to discuss their existing procedures for the issuance of White House passes and other security-related functions that provide for access to sensitive, classified information at the White House.

Senator DeConcini, as chairman of both the Intelligence Committee and the subcommittee, wanted to utilize the Intelligence Committee's expertise in security-related matters and asked me to conduct a review of the existing White House security procedures. I would like to point out that at the outset of the first meeting at the White House, I made it clear to the officials with whom I met that I was there as a nonpartisan, unbiased representative from the Select Committee on Intelligence sent to review their procedures from an impartial, objective view and to make recommendations, if any were needed, based on our discussions.

Over the course of meetings on 2 separate days, May 18 and May 23, 1994, and many followup telephone conversations with White House personnel from the Office of Administration, we discussed the procedures set forth by the White House that covered the issuance of White House passes and three primary areas of secu-

rity—one, background investigations and accountability procedures; two, classified document control and accountability; and, three, computer security.

The officials that I met with during the course of these meetings indicated that there were certain operational inefficiencies during the early stages of this administration that contributed to the severe backlog of the issuance of permanent White House passes for White House employees.

At the conclusion of my review, I presented four recommendations to the chairman that I felt, in my professional view, could assist the White House with their security operations. All four of these recommendations were accepted by the chairman and forwarded to the President on August 11, 1994.

Mr. Chairman, I would like to submit a copy of that letter for your hearing record.

The CHAIRMAN. Without objection, we will put it in the record.
[The letter referred to follows:]

U.S. SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, DC, August 11, 1994.

The PRESIDENT,
The White House, Washington, DC.

DEAR MR. PRESIDENT: Mr. David Watkins of the Office of Administration asked for assistance from the Senate Select Committee on Intelligence (SSCI) to review the White House procedures for the issuance of White House passes and other security-related functions that provide access to sensitive classified information in the Executive Office of the President and to make any recommendations that could possibly enhance those procedures.

Mr. James Wolfe, Director of Security for the SSCI, met with your officials in May to review your procedures and to inform me of his findings. That review is complete and I am forwarding to you my recommendations to refine your current system.

It should be noted that the White House officials Mr. Wolfe met with were candid and forthcoming regarding security procedures at the White House and the issuance of White House passes. These officials did indicate, however, that there were certain operational inefficiencies during the early stages of your Administration that contributed to the severe backlog of the issuance of permanent White House passes for White House employees. Nevertheless, they have taken the appropriate corrective action to remedy the problem and there appears to be a good system in place to monitor the process of all employees undergoing new employment at the White House.

My recommendations are as follows:

1. White House Office of Administration should be assigned a Secret Service Agent or other appropriate government official in a full-time position to function as the Director of Security. Such a person would be a non-partisan individual responsible for overseeing all security-related functions within the Office of Administration. The person filling this position would be a security professional to provide the White House with broad security-related specialties, to include but not limited to: knowledge of investigative and adjudicative procedures; classified document handling procedures; communication security procedures; and a law enforcement background. This person would be directly involved in the decisionmaking process for final adjudication of White House access passes and Top Secret security clearances. This person could provide the White House with institutional knowledge that would ensure continuity across Administrations.

2. A single office within the White House should coordinate all background investigations. Currently the Executive Office of the President has two separate offices that initiate, track, control, and process background investigations. One office processes political appointees and another processes career employees. In addition to these arrangements, the White House Counsel's Office processes the background investigations of Presidential Appointees who require Senate confirmation. This practice gives the appearance of an enormous amount of redundancy and lack of centralized control. These offices should be combined and headed by a senior security official (preferably the Director of Security identified in item #1) in the White House. It is my understanding that past Administrations functioned in this manner.

3. All security clearance/background investigation paperwork should be completed and turned in on or before the first day of employment with the White House rather than the current procedure of 30 days. This would alleviate any delay in initiating a security background investigation and thus reduce the amount of time, now approximately 120 days, that it takes to process a new employee for a sensitive White House access pass.

4. Currently, new employees are required to undergo an FBI full-field background investigation for employment at the White House, regardless if they have been the subject of a recent full-field investigation from another government agency. I would suggest to you that new employees who have undergone an FBI background investigation within 5 years should not have to undergo another full-field background investigation. The same background investigation that is currently accepted throughout the government should satisfy White House requirements as well. Implementing this recommendation alone would save the American taxpayers a considerable amount of money.

I hope that these recommendations will be of use to you and your Administration.
Sincerely,

DENNIS DECONCINI,
*Chairman, Subcommittee on Treasury,
Postal Service, and General Government.*

Mr. WOLFE. Let me explain the recommendations that were sent to the President. Recommendation 1: The White House Office of Administration should be assigned a Secret Service agent or other appropriate Government official in a full-time position to function as the Director of Security. Such a person would be a nonpartisan individual responsible for overseeing all security-related functions within the Office of Administration. The person filling this position would be a security professional to provide the White House with broad security-related specialties, to include, but not limited to, knowledge of investigative and adjudicative procedures, classified document handling procedures, communication security procedures, and a law enforcement background.

This person would be directly involved in the decisionmaking process and final adjudication for White House access passes and top secret security clearances. The person could provide the White House with institutional knowledge that would ensure continuity across administrations.

Recommendation 2: A single office within the White House should coordinate all background investigations. At the time of this review, the Executive Office of the President had two separate offices to initiate, track, control, and process background investigations. One office processed political appointees, while another processed career employees.

In addition to these arrangements, White House counsel's office processed the background investigation of Presidential appointees who required Senate confirmation. This practice gave the appearance of an enormous amount of redundancy and a lack of centralized control. These offices should be combined and headed by a senior security official in the White House, preferably the Director of Security, as recommended in recommendation 1.

Recommendation 3: All security clearance background investigation paperwork should be completed and turned in on or before the first day of employment with the White House, rather than the current procedure of within 30 days of starting employment. This would alleviate any delay in initiating a security background investigation and thus reduce the amount of time, now approximately 120 days, that it takes to process a new employee for a sensitive White House pass.

And, finally, recommendation 4. At the time of this review, new employees were required to undergo an FBI full-field background investigation for employment at the White House, regardless of whether they had been the subject of a recent full-field investigation from another Government agency. The fourth recommendation was that new employees who have undergone an FBI background investigation within 5 years should not have to undergo another full-field background investigation. The same background investigation that is currently accepted throughout the Government should satisfy White House recommendations as well.

On August 22, 1994, Lloyd Cutler, special counsel to the President, responded to Senator DeConcini stating that the White House was, "Currently in the process of our own examination and assessment of White House security procedures," The letter went on to say that:

At first glance, many of your recommendations appear to dovetail with the modifications currently under consideration. In any event, all of your recommendations will be given the most serious consideration. When our review is complete, we will be happy to let you know of any changes we make.

Mr. Chairman, I would like to submit a copy of that letter for the record as well.

The CHAIRMAN. Without objection, we will place it in the record.
[The letter referred to follows:]

THE WHITE HOUSE,
Washington, August 22, 1994.

Hon. DENNIS DECONCINI,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR DECONCINI: On behalf of the President, let me express our sincerest appreciation for your recent correspondence concerning White House security procedures. We very much appreciated your willingness to share the expertise of Mr. Wolfe, the Director of Security for the Senate Select Committee on Intelligence. He was unfailingly courteous and helpful in his review.

We are currently in the process of our own examination and assessment of White House security procedures. At first glance, many of your recommendations appear to dovetail with the modifications currently under consideration. In any event, all of your recommendations will be given the most serious consideration.

When our review is complete, we would be happy to let you know of any changes we may make. In the meanwhile, I hope you would not mind our continuing to call upon Mr. Wolfe as a resource.

Thank you again for your interest in this matter.

Sincerely,

LLOYD N. CUTLER,
Special Counsel to the President.

Mr. WOLFE. Thank you, Mr. Chairman. I am prepared to answer any of your questions at this time.

The CHAIRMAN. Thank you, Mr. Wolfe.

[The prepared statement of Mr. Wolfe follows:]

PREPARED STATEMENT OF JAMES A. WOLFE

Thank you Mr. Chairman, ranking member, members of the committee. My name is James Wolfe. I am the Director of Security for the Senate Select Committee on Intelligence.

For the past nine years, I have been a staff member of the Select Committee on Intelligence, the last six of which, I have been in my current position. In this role I am uniquely familiar with the day to day operations regarding the secure handling, tracking and storage of some of the most highly classified information that is provided to the Congress. Moreover, as the Security Director, I am the primary contact for the committee as the recipient of the results of sensitive background in-

vestigations that are initiated by the Select Committee and conducted by the Federal Bureau of Investigation of committee staff or potential staff.

In March 1994, Senator DeConcini wrote to Mr. Phil Lader, White House Deputy Chief of Staff, regarding a recent meeting on White House security matters and made an offer to make me available for the purpose of reviewing White House security procedures.

I would like to emphasize that in May 1994, at the direction of former Senator Dennis DeConcini, who was then-chairman of the Intelligence Committee, as well as the chairman of the Appropriations Subcommittee for which the jurisdiction of White House appropriations comes under; I was asked to meet with White House officials and to discuss their existing procedures for the issuance of White House passes and other security-related functions that provide for access to sensitive classified information at the White House.

Senator DeConcini, as chairman of both the Intelligence Committee and the subcommittee, wanted to utilize the Intelligence Committee staff's expertise in security-related matters and asked me to conduct a review of the existing White House security procedures.

On May 18, 1994 I met with that following White House officials: David Watkins, assistant to the President for Management and Administration; Patsy Thomason, special assistant to the President for administration; Chris Cerf, counsel for the Office of Administration; Craig Livingstone, security manager for the Office of Administration, political; Chuck Easley, security manager for the Office of Administration, career; Jamie Baker, counsel representing the National Security Council.

On May 23, 1994 in a follow-up meeting I met with the following officials: Patsy Thomason, special assistant to the President for administration; Chris Cerf, counsel for the Office of Administration; Craig Livingstone, security manager for the Office of Administration, political; Jamie Baker, counsel representing the National Security Council and others.

I would like to point out that at the outset of the first White House meeting, I made it clear to the officials with whom I met, that I was there as a non-partisan, unbiased representative from the Select Committee on Intelligence sent to review their security procedures from an impartial, objective view and to make recommendations, if any were needed, based on our discussions.

Over the course of these two meetings, and many follow-up telephone conversations with White House personnel from the Office of Administration we discussed the procedures set forth by the White House that covered the issuance of White House passes and three primary areas of security: (1) background investigations and accountability procedures; (2) classified document control and accountability; and (3) computer security.

The officials that I met with during the course of these meetings indicated that there were certain operational inefficiencies during the early stages of the Clinton administration that contributed to the severe backlog of the issuance of permanent White House passes for White House employees.

At the conclusion of my review, I presented four recommendations to the chairman that I felt in my professional view could assist the White House with their security operations. All four of these recommendations were accepted by the chairman and forwarded to the President on August 11, 1994.

In this letter, Chairman DeConcini wrote to the President regarding the review process and to transmit four recommendations to enhance the existing White House procedures for the issuance of White House passes and other security-related functions in the Executive Office of the President.

Let me explain the following recommendations that were provided to the White House:

1. The White House Office of Administration should be assigned a secret service agent or other appropriate Government official in a full-time position to function as the Director of Security. Such a person would be a non-partisan individual responsible for overseeing all security-related functions within the Office of Administration. The person filling this position would be a security professional to provide the White House with broad security-related specialties, to include but not limited to: knowledge of investigative and adjudicative procedures; classified document handling procedures; communication security procedures; and a law enforcement background. This person would be directly involved in the decisionmaking process for final adjudication of White House access passes and top secret security clearances. This person could provide the White House with institutional knowledge that would ensure continuity across administrations.

2. A single office within the White House should coordinate all background investigations. At the time of my review, the Executive Office of the President had two separate offices to initiate, track, control, and process background investigations.

One office processed political appointees and another office processed career employees. In addition to these arrangements, the White House counsel's office processed the background investigations of Presidential appointees who required Senate confirmation. This practice gave the appearance of an enormous amount of redundancy and lack of centralized control. These offices should be combined and headed by a senior security official in the White House (preferably the Director of Security identified in recommendation #1).

3. All security clearance/background investigation paperwork should be completed and turned in on or before the first day of employment with the White House rather than the current procedure of within 30 days of starting employment. This would alleviate any delay in initiating a security background investigation and thus reduce the amount of time, now approximately 120 days, that it takes to process a new employee for a sensitive White House access pass.

4. At the time of my review, new employees were required to undergo a FBI full-field background investigation for employment at the White House, regardless of whether they had been the subject of a recent full-field investigation from another Government agency. The fourth recommendation was that new employees who have previously undergone a FBI background investigation within 5 years should not have to undergo another full-field background investigation. The same background investigation that is currently accepted throughout the Government should satisfy White House requirements as well. Implementing this recommendation alone would save the American taxpayers a considerable amount of money.

On August 22, 1994, Lloyd Cutler, special counsel to the President, responded to Senator DeConcini stating that the White House was "currently in the process of [their] own examination and assessment of White House security procedures." The letter went on to say that "at first glance, many of your recommendations appear to dovetail with the modifications currently under consideration. In any event, all your recommendations will be given the most serious consideration. When our review is complete, we would be happy to let you know of any changes we may make."

Thank you Mr. Chairman, I am prepared at this time to answer any of the committee's questions.

The CHAIRMAN. Ms. Gemmell, do you have any statement?

TESTIMONY OF NANCY GEMMELL

Ms. GEMMELL. I would just like to say good afternoon, Mr. Chairman and members of the committee. I thank you for this opportunity to appear before you and I will be pleased to take your questions. Thank you.

The CHAIRMAN. Thank you. We are honored to have you here.

Ms. Beck.

TESTIMONY OF MARY BECK

Ms. BECK. Good afternoon. My name is Mary Beck. I am a career civil servant and I am currently the Associate Director for Human Resources Management at the Office of Administration for the Executive Office of the President. Although my title has changed somewhat, I have held that position, initially on an acting basis, since January 1993.

I first came to the Executive Office of the President in June 1991 during the Bush administration. At that time, I was Chief of the Operations Branch within the Human Resources Management Division. Prior to working in the Executive Office of the President, I worked for the Air Force for approximately 10 years in various personnel-related positions.

As Associate Director for Human Resources Management, my responsibility is to oversee the provision of human resources services to the staff of the Executive Office of the President. This would include data and payroll services, staffing services, employee relations, employee benefits, entitlement programs, security training,

equal employment opportunity; in short, the full range of human resource programs and services.

In the course of my job, in late 1993, early 1994, I was part of a task force asked to create a single data base from several existing data bases that could be used to identify people currently working at the EOP complex. The original purpose of this data base was to identify individuals who would receive wooden Easter eggs signed by the President, so I referred to the data base as the bunnybase.

Two of the principal existing data bases that were used to derive the bunnybase were the personnel payroll data base, for which I had responsibility, and the Secret Service pass file data base. In the context of putting together bunnybase, we compared the two data bases I just mentioned, the personnel payroll data base and the Secret Service pass data base, and found hundreds of disconnects or names that, while not appearing in the personnel payroll data base, still were listed on the Secret Service active passholder list. Some of the disconnects included former Bush administration officials, such as James Baker and my former boss, Paul Bateman.

This problem continued for months and, as a result, we had a meeting with representatives of the Secret Service to discuss the problems we were having with the Secret Service pass file data base. At that meeting, the Secret Service representatives acknowledged the problem, which they attributed to a systems breakdown between their E-pass system, which they said was current, and the WAVES system upon which we relied. Apparently, updates and corrections being made to the E-pass system were not automatically being transmitted to the WAVES system. The Secret Service representatives informed us they had a contractor working on the problem.

I would be happy to answer any questions.

The CHAIRMAN. Thank you, Ms. Beck.

Mr. Easley, do you have any opening statement?

TESTIMONY OF CHARLES EASLEY

Mr. EASLEY. A very brief one. Mr. Chairman, distinguished Senators of the U.S. Senate Committee on the Judiciary, my name is Charles Easley. I am 56 years old, from Missouri. I have served my country for 20 years in the U.S. Army, including 14 years in Army Intelligence, ending my career as a master sergeant. I was awarded the Bronze Star and other decorations for my Army service in Vietnam.

In 1986, I was hired to serve as the security officer for the Executive Office of the President. I joined the Office of Administration in the Executive Office of the President as a career employee during the Reagan administration and have served the Bush and Clinton administrations since. I continue to serve as a career, nonpolitical employee.

My duties as a security officer for career employees in the White House complex was expanded, as most of you know, I am sure, to include all personnel security functions for employees in the White House complex. I look forward to serving in my new role and answering any questions the committee may ask of me.

Thank you.

The CHAIRMAN. Thank you, Mr. Easley. We appreciate having all of you here and we appreciate your cooperation.

Let me start with you, Mr. Cole, and let me ask you this question. Have you had any contact or conversations with Mr. Craig Livingstone since this matter has come to public light?

Mr. COLE. Yes, I did.

The CHAIRMAN. Now, could you describe that contact for us?

Mr. COLE. Yes, I can. On June 7th of this year, I received a phone message from Craig Livingstone indicating that he wanted to talk to me about a case. On the same day at approximately 3:45 p.m., I met with Mr. Livingstone outside his office in the Old Executive Office Building. We briefly discussed a temporary passholder's case under review.

Unsolicited, Mr. Livingstone asked whether or not I had seen the press release made by his attorney concerning the Billy Dale file. I responded in the affirmative, at which point Mr. Livingstone stated that, we just wanted you guys to know that we weren't blaming the Secret Service; using the old list was our fault and we had the current stuff you guys gave us; I don't know what happened. I told Mr. Livingstone that I did not think he could blame us.

The CHAIRMAN. What did you do following that conversation?

Mr. COLE. I reported it to my supervisors.

The CHAIRMAN. How long have you served with the Secret Service?

Mr. COLE. I have been with the Secret Service since 1982. Prior to that, I was an ATF agent, 1975.

The CHAIRMAN. You are an honorable man who has built his career on integrity and service to our country. You would not make these disturbing allegations lightly, would you?

Mr. COLE. No, I would not.

Senator BIDEN. What is the allegation?

The CHAIRMAN. Do you want to answer that?

Mr. COLE. Well, basically, I understood Mr. Livingstone to tell me that they knew exactly what list they were talking about provided by the Secret Service. We were always giving them correct information, or if it was incorrect, we would correct it. That press release that he was alleging that his attorney gave was blaming the Secret Service for giving them outdated lists.

The CHAIRMAN. What did your supervisor do with the information you gave him?

Mr. COLE. I believe they talked to our chief counsel about it.

The CHAIRMAN. OK. Do you know what they did with the information?

Mr. COLE. Well, my understanding is that as of yesterday the independent counsel advised that it would be all right for me to discuss this information.

The CHAIRMAN. Well, let me get this straight. Is what you are saying here that there has been an attempt to shift the blame from the White House to the Secret Service?

Mr. COLE. That is correct.

The CHAIRMAN. You have no doubt that that is what he said to you?

Mr. COLE. In my mind, it is clear.

The CHAIRMAN. I see. Now, I won't use the term coverup or anything like that yet, but this looks like perhaps another effort by the White House to put—you know, to not be fully truthful with the American people or with this committee, and I think that is wrong and I want to applaud you for being willing to come forward and tell us this. And you don't have any question that that happened?

Mr. COLE. Well, I am not going to speculate on, you know, what his intentions were. The only thing that I am clear of is that what Mr. Livingstone told me and that they had the correct information they received from the Secret Service. I cannot speculate on what was actually in his mind. I won't do that.

The CHAIRMAN. OK. Now, Ms. Undercoffer, Ms. Wetzl testified that the copy of the 1993 Secret Service list that she was shown begins with the name Agin, A-g-i-n. The real name, of course, is Hagin, H-a-g-i-n, right?

Mr. UNDERCOFFER. Yes, sir, that is correct.

The CHAIRMAN. In fact, the actual sheet of paper has a space before the name Agin, so there is a space there. Ms. Wetzl typed up the list of names from the labels that Mr. Marceca had placed on file—on the files, right?

Mr. UNDERCOFFER. Yes, sir, I am assuming so.

The CHAIRMAN. From that testimony, it is fair to conclude that Mr. Marceca used that 1993 Secret Service list or one very much like it in the Update Project. Wouldn't you agree?

Mr. UNDERCOFFER. That seems to be a logical conclusion.

The CHAIRMAN. Tell me, then, does that 1993 Secret Service list have the names of hundreds of inactive passholders?

Mr. UNDERCOFFER. No, sir, it does not. In fact, I have had an opportunity to compare this 1993 list with the list of—and the list I have is 477 individuals that are the subject of these hearings, and I have done extensive reviews and analysis of that list compared to this July 8, 1993, list, and I have come to the following conclusions.

The CHAIRMAN. You had a chance to review the White House—the documents the White House supplied to the committee last night, right?

Mr. UNDERCOFFER. Yes, I have.

The CHAIRMAN. OK. What were they, by the way, just so everybody understands?

Mr. UNDERCOFFER. My conclusions, sir?

The CHAIRMAN. Yes.

Mr. UNDERCOFFER. In comparing the list of 477 individuals to the July 8, 1993, listing of active passholders—

The CHAIRMAN. Go ahead.

Mr. UNDERCOFFER. This is a listing of active passholders from the WAVES system as of July 1993. Of that—of these, comparing the 477 to this list, 91 individuals of the 477 have not held a White House pass since 1989 and were not included on the July 1993 list; 379 of those individuals, of the 477, were inactive and they also were not included on this July list.

Of this July list, 85 individuals were correctly listed active, as compared to the 477 list. There were 13 anomalies on the list. There were—to be quite frank, there were eight errors, transmission errors, between the E-pass system to the WAVES system

where there were eight individuals listed as active when they were, in fact, inactive, and then there were five other anomalies, the first being the—the first name on the list is space Agin. That was an operator input error, and so the—in any computer-generated list, to the eye it looks like Agin. However, it is space Agin, and until we physically went in and physically took that record out, it appeared in there.

The other five were—I am sorry—the other four were individuals that were listed on this 1993 list. They were James Addison Baker, Celestine Smith, Marlin Fitzwater, and Joan Gibson. They were not made inactive passholders until August 26, 1993 at the request of the White House Personnel Security Office. These individuals, when they left in January 1993, did not turn in their pass and then—and, consequently, we had no way of knowing that we were to delete them from the roles of permissible people into the White House.

The CHAIRMAN. So there were eight errors out of how many names?

Mr. UNDERCOFFER. Eight errors out of 477.

The CHAIRMAN. And the 400 names were accurate—I mean, the 400—

Mr. UNDERCOFFER. The other eight errors, and the other 469 were accurate.

The CHAIRMAN. Were accurate. My time is—did you want to say something else?

Mr. UNDERCOFFER. Yes, I did. I just wanted to make sure that—

The CHAIRMAN. Tell us the significance of that so everybody understands it.

Mr. UNDERCOFFER. The significance of that is if one were to take the list of 477 individuals whose name were submitted for background investigations, 379 of them were not on a passholder active list produced by the U.S. Secret Service, and of those 379 individuals, 91 of those individuals have not held a White House pass since 1989. Consequently, they would not have been on a list that we produced after 1989.

The CHAIRMAN. Well, how do you respond to Senator Biden's 93 errors that he has mentioned?

Mr. UNDERCOFFER. Well, I think I don't know how to respond. I think perhaps he is incorrect. There were not 93 errors on this list.

The CHAIRMAN. There were only eight?

Mr. UNDERCOFFER. Yes.

The CHAIRMAN. OK. My time is up.

Senator Biden.

Senator BIDEN. Gentlemen, it is good to know that the Secret Service hasn't made any mistakes. It is nice to know that. On the list that you referred to that you have in front of you, you say there were only eight names, including James Baker and Marlin Fitzwater, who were listed as being active that were not active, but they were active in your file because they hadn't turned in their pass. Is that right?

Mr. UNDERCOFFER. That is not correct, Senator Biden.

Senator BIDEN. OK. Well, tell me, how is James Baker on the list?

Mr. UNDERCOFFER. James Baker on the July 1993 list was listed as an active passholder.

Senator BIDEN. Correct.

Mr. UNDERCOFFER. He was not deactivated as a passholder until August 26, 1993, at the request of the White House Office of Personnel Security.

Senator BIDEN. I understand that, so all I am saying is you have no way of knowing who is active or inactive if they kept their pass unless someone from the White House calls you and tells you, take them off, right?

Mr. UNDERCOFFER. That is correct, sir. That is the procedure that is in place between the White—

Senator BIDEN. No, no, I am not—don't be so defensive, OK, all right?

Mr. UNDERCOFFER. No. That is—all right.

Senator BIDEN. So the causes of errors—look at that little chart up there. Correct me now if I am wrong. If there is an error—forget whose fault the error is, OK? It is the fault of the Lord, OK? It is the fault of the devil, all right? You guys who are professionals go so far out of your way to seem to cover your rear ends that it really disturbs me.

But at any rate, let's just figure out how James A. Baker—or let's say Fitzwater—you all knew Fitzwater didn't work there anymore, I mean, unless you were in space, right? These other folks—you are professionals, you have been there a long time. They are saying to these other people who are in the Office of Administration that they should have known Fitzwater; any idiot would know that. That is the implication here.

Mr. COLE. That is not correct, sir.

Senator BIDEN. Did you all think Fitzwater was still active?

Mr. COLE. That is not our job.

Senator BIDEN. I got it. It didn't happen on your watch. You don't do windows, right?

Mr. COLE. It is not our job to make that determination.

Senator BIDEN. I understand that, OK. Now, the cause of an inaccurate list, inaccurate in the sense that if the President of the United States called your office and said, hey, look, I am just curious; I want a list of everybody who has a right to walk in and out of this building, who has a pass, a hard pass—you would go to a computer, I assume, press a button and produce a list and you would give it to him, right?

Mr. UNDERCOFFER. That is correct.

Senator BIDEN. OK. Now, on that list there could be previous passholders who were no longer—should no longer have had access to the White House, but they didn't bother to come and turn in their pass to you or to anybody else to say, I am out of here, right?

Mr. UNDERCOFFER. Sir, that has happened on occasion, yes.

Senator BIDEN. That happens, so the President would look down and say on this list, my golly, Fitzwater still has access to the White House; I don't want Fitzwater walking in and out of the press room at 2:30 in the morning, I don't want that to happen. And he would have to say, he is not on this list, and contact you guys and say, gee, I don't want Fitzwater to be able to come in and

out; take his pass, right, in order to get his name off? Is that how it would work?

Mr. COLE. That is correct.

Senator BIDEN. And one is if a passholder doesn't turn in his pass or, two, the Secret Service is not told when a White House passholder leaves the White House, because if one of those two things don't happen, you keep them on the list as active, right?

Mr. UNDERCOFFER. Yes, sir, we do.

Senator BIDEN. OK, and a third way it could happen is if a technical error occurs when the E-pass database doesn't communicate to the WAVES data base a name. Is that correct?

Mr. UNDERCOFFER. Well, sir, that did happen, but over a very short period of time.

Senator BIDEN. I am just asking how it happens. Don't keep covering yourself. Can that happen? Is that the third way it could get messed up?

Mr. UNDERCOFFER. Yes, sir, that is correct.

Senator BIDEN. OK.

Mr. UNDERCOFFER. But if I could elaborate, it is not attempt to cover ourselves. In the computing world, there are little errors that occur, as everybody that has ever received a phone bill that has a call on it that they didn't make—

Senator BIDEN. No, I am not blaming you of anything. I just want to figure out how the mistakes occur. Now, Ms. Beck said when she wanted to get together this Easter egg list—apparently, somebody in the White House said, look, I want to give everybody who works in the Office of the President—I guess the First Lady said, I want to give them a wooden Easter egg or something, right, or some memento for Easter, right?

Ms. BECK. Somebody must have said it.

Senator BIDEN. Somebody must have said it because you got notice to find out who are all the people that work for the Office of the President, right?

Ms. BECK. Yes.

Senator BIDEN. And then you contacted the—what did you do then when you found out that you had to get a list of names and addresses of people to send some wooden Easter egg to, or something to?

Ms. BECK. Well, there was a task force put together. I was a member of the task force. The task force was made up of many people.

Senator BIDEN. And the task force's purposes was what, to get the names of people to send a memento to?

Ms. BECK. Was to develop an all-encompassing data base of active people on the EOP complex.

Senator BIDEN. EOP? What does EOP mean?

Ms. BECK. Executive Office of the President. Sorry.

Senator BIDEN. Executive Office of the President, and you assumed it was for the purpose of giving them some memento, right?

Ms. BECK. That initially was the purpose, yes.

Senator BIDEN. OK. Now, did you ever get that list compiled, that task force?

Ms. BECK. Yes, yes, we completed the project. We still use that data base today.

Senator BIDEN. And what did you do? Did you call the Secret Service and they just sent you the list?

Ms. BECK. It was done as a computer—it was a computer transfer of data and I did not personally do that. Someone else on the task force—we had members who were from the Information Systems Technology Division also participating on the task force who handled the data part of that process.

Senator BIDEN. What is this thing about the Secret Service? Somebody working for the Secret Service says, we have got a problem with our computers. Isn't that what you said?

Ms. BECK. Well, when we were matching the data and found the number of disconnects that we found and the more that we—

Senator BIDEN. Disconnects meaning Secret Service listed somebody as working in the office that you just described?

Ms. BECK. Right.

Senator BIDEN. And you found out they weren't working there any longer?

Ms. BECK. That is correct, that is correct.

Senator BIDEN. OK. What happened then?

Ms. BECK. And that is when we met with the Secret Service to explain to them the problem that we were having.

Senator BIDEN. And what did they tell you?

Ms. BECK. Well, that is when they said that most likely—well, one thing they said that they would, you know, delete a passholder if they were notified that someone was gone, and they also said that they were having this technical problem of the E-pass system communicating with the WAVES system.

Senator BIDEN. Now, do you know anything about that technical problem, sir?

Mr. UNDERCOFFER. Yes, sir, I do.

Senator BIDEN. Can you explain what that technical problem was?

Mr. UNDERCOFFER. Yes, sir, I can. The E-pass system is part of our critical system at the White House. That is part of the computer system that allows or disallows people physical access to the White House complex. The WAVES system, which also holds an identical data base as the passholder data base in the E-pass system—that is there for administrative reasons.

We report the information—any time there is a change made to a record in E-pass, that change is sent over to the WAVES system so that the identical change can be made. In early 1993, for an extended period of time—

Senator BIDEN. How extended, days, months, hours, weeks?

Mr. UNDERCOFFER. For a few months, with the change of administration, with the very large increase in system load, data was not being transferred as rapidly—

Senator BIDEN. By you? You were not transferring the data as rapidly, right?

Mr. UNDERCOFFER. No, I—

Senator BIDEN. I mean, not you, your office, the Secret Service.

Mr. UNDERCOFFER. The Secret Service, the—

Senator BIDEN. Was not keeping up?

Mr. UNDERCOFFER. No, sir. Well, the computer system—

Senator BIDEN. Well, somebody works the computer system. Who works the computer system?

Mr. UNDERCOFFER. The computer system works by itself. This was a function of the—

Senator BIDEN. No one punched anything in? It was people from heaven came down and did that?

Mr. UNDERCOFFER. No, sir.

Senator BIDEN. There were Secret Service employees, right?

Mr. UNDERCOFFER. Yes, sir, there were.

Senator BIDEN. Right, bingo. So you all weren't keeping up, right?

Mr. UNDERCOFFER. I don't think that is an exactly fair statement.

Senator BIDEN. I got it, OK.

Mr. UNDERCOFFER. It was a function of the hardware that had worked quite fine for the past 4 or 5 years, like—

Senator BIDEN. So the hardware broke down?

Mr. UNDERCOFFER. There was a—it didn't break down, sir. There was—the system was at its capacity and as—

Senator BIDEN. That is like us talking about new taxes being enhancement of revenues, but go ahead.

Mr. UNDERCOFFER. So, anyway—

Senator DEWINE [presiding]. If I could just ask a question, you have had a chance in the volume. I mean, is this the bottom line?

Mr. UNDERCOFFER. We had a change in the volume that the system was processing and we—

Senator BIDEN. Now, let me ask you—

Senator DEWINE. The same capacity? We now have, what, a significant change in the capacity?

Senator BIDEN. OK, you had a change in the volume.

Mr. UNDERCOFFER. Almost 100-percent capacity change.

Senator BIDEN. OK, you had a change in the volume.

Mr. UNDERCOFFER. Yes, sir.

Senator BIDEN. Now, did the problem occur because you couldn't get it punched in enough—

Mr. UNDERCOFFER. No, sir.

Senator BIDEN [continuing]. Or because the system itself couldn't absorb that many names?

Mr. UNDERCOFFER. It was neither. There is a link between the E-pass system and the WAVES system. It is a small computer called an ethernet hub.

Senator BIDEN. Yes.

Mr. UNDERCOFFER. And it was being bogged down by the traffic. There were—and I can only speak in reference to the 477 names on this list.

Senator BIDEN. Why?

Mr. UNDERCOFFER. Because that is the only thing I have sampled that I can speak definitively to. Of those 477 names, there were 8 names that their records were not immediately updated when the—immediately, once the E-pass system was updated, the WAVES system was updated.

Senator BIDEN. Have you figured out how much the time lapse was in those eight names, or could you for the record submit that to us? You can determine that, right?

Mr. UNDERCOFFER. No. On those eight names, until they were physically brought to our attention—one of the reasons we constantly are printing out lists, providing them to the Office of Personnel Security, is so that they can review those lists and report back to us any discrepancies they find so that we can change them.

Senator BIDEN. I thought you were saying there are two different issues here. One is that they didn't tell you about names that should have been deleted, so you kept them on.

Mr. UNDERCOFFER. That has happened.

Senator BIDEN. And the second one was this computer problem, which I assume did not have to do with whether they told you someone should or shouldn't be on, but had to do with the fact the computer was being overloaded.

Mr. UNDERCOFFER. That is correct, but I am only speaking to the computer being overloaded at the moment.

Senator BIDEN. That is what I am asking. So the computer being overloaded, how long a timelag did it occur between the time that the WAVES pass system should have gotten these eight names before it, in fact, got the eight names?

Mr. UNDERCOFFER. Sir, these eight names—there were several months.

Senator BIDEN. Several months?

Mr. UNDERCOFFER. We did not—

Senator BIDEN. Could you get the exact time for the record for us? Can you determine that for us?

Mr. UNDERCOFFER. No, sir, I cannot.

Senator BIDEN. You cannot. How come?

Mr. UNDERCOFFER. Well, because these eight names, as they passed from the E-pass system to the WAVES system, were lost.

Senator BIDEN. Who lost them?

Mr. UNDERCOFFER. The names themselves were not lost. The record was not updated.

Senator BIDEN. Well, who didn't update it, the White House?

Mr. UNDERCOFFER. No, sir. The computer system didn't update it.

Senator BIDEN. The computer system didn't update it, so that means—I mean, this is an automatic process.

Mr. UNDERCOFFER. Yes, sir, that is correct.

Senator BIDEN. So the computer system didn't update it, so you don't—so the computer system, to use your original word, lost them or didn't update them?

Mr. UNDERCOFFER. That is correct, sir.

Senator BIDEN. I see, OK. Am I allowed to keep going or do you want to go and then I will come back?

Senator DEWINE. Well, whatever you want to do. If you want to continue on this, it doesn't—

Senator BIDEN. Well, no. It is convenient whatever way you want to do it. Since there are only two of us, you—

Senator DEWINE. We are up to three now, so—

Senator BIDEN. OK. Well, I am over my time. I will come back. I have got a lot more questions.

Senator DEWINE. OK, fine.

Mr. Cole, let me go back to you, if I could. Can you tell me again exactly what Mr. Livingstone said to you?

Mr. COLE. Mr. Livingstone stated, we just want you guys to know that we weren't blaming the Secret Service; using an old list was our fault and we had the current stuff you guys gave us; I don't know what happened.

Senator DEWINE. So, in essence—and correct me if I am wrong, but he basically was saying, well, you know, Secret Service, no hard feelings; we have got to blame somebody and we are going to blame the Secret Service; no hard feelings, but that is what we are going to do.

Mr. COLE. Well, I am not going to speculate what he was thinking. I can only state what he told me.

Senator DEWINE. OK. Mr. Wolfe, let me get back to you a little bit in regard to the meetings you held at the White House. How many different meetings were you involved in?

Mr. WOLFE. Senator, I was involved in two meetings.

Senator DEWINE. And who was at those meetings?

Mr. WOLFE. On May 18, 1994, I met with Mr. David Watkins, Assistant to the President for Management and Administration; Mr. Patsy Thomason, Special Assistant to the President for Administration; Chris Cerf, Counsel for the Office of Administration; Craig Livingstone, Security Manager for the Office of Administration; Chuck Easley, Security Officer for the Office of Administration; Jamie Baker, counsel, representing the National Security Council. On May 23, I met with Ms. Patsy Thomason, Chris Cerf, Craig Livingstone, and Jamie Baker, and there were also some others on that day because we were doing a review of some other offices and some other angles.

Senator DEWINE. Did you determine whether the Personnel Security Office or its head at the time you conducted the review, Mr. Craig Livingstone, maintained any data bases designed or capable of storage FBI background file information?

Mr. WOLFE. Yes, sir. The White House Office of Administration took some corrective action by instituting what was described to me as an automated data base or a checklist. This—

Senator DEWINE. Could you pull your mike—I am sorry—could you pull your mike again? It was described to you as a what?

Mr. WOLFE. This was described to me as an automated data base or a checklist. This new procedure was developed by the Office of Administration to ensure that the process of background investigations was well monitored and that nothing fell between the cracks between the background investigation process that led to a permanent White House pass.

Senator DEWINE. Did you actually look at this data base?

Mr. WOLFE. No, sir.

Senator DEWINE. They told you about the data base?

Mr. WOLFE. They described the data base in detail. I took notes on it. There were approximately 12 fields that covered biographical data.

Senator DEWINE. Do you want to tell us what those fields were?

Mr. WOLFE. Yes, sir. The first field is obviously their name. The second field indicated that a permanent—that if a permanent pass had been issued. The next field was a name check field. This was conducted by the Federal Bureau of Investigation. The next field is a NCIC check; it is a National Crime Information Center check.

The next field was an authorization field. This field indicated that an authorization form was sent to security from the management and administration offices verifying employment with the White House.

The next field was a security interview field. This field indicated that a preemployment security interview was conducted. The next field was a security briefing field. This indicated that a mandatory security briefing was given to the employee before a temporary hard pass was issued. This particular briefing consisted of an overview briefing, security video, question and answer session. It was performed by the White House security manager.

The next field was a drug-testing field. This field indicated that the employee had been tested for illegal drug use. Personnel data statement was the next field, and then the next field was a financial disclosure field. They referred to it as a 450/278. It is basically that the individual had completed the necessary financial disclosure statements required for employment at the White House.

The next field was a background investigation date. This field indicated the date on which the FBI's background investigation was completed, and finally the IRS field. This field indicated that the applicant had a favorable IRS check completed.

Senator DEWINE. Now, I am not sure I understand whether or not this is—is it your understanding that this is a system that has blocks which indicate yes or no? I mean, in other words, is that all the information is, whether they had this particular check—for example, on the drugs, whether or not they had been tested for drugs, yes, they have been tested for drugs—or whether it contained more information, actually more substantive information beyond the fact that they had done this check or they had done this procedure?

Mr. WOLFE. My impression of the drug-testing field was that, yes or no, the employee had completed a drug test, and probably the date.

Senator DEWINE. How about the other fields? What was your impression of those?

Mr. WOLFE. The IRS field—now, I am not sure about this, but I asked a question if an issue arose regarding unpaid taxes by the applicant. I was told that the applicant would be required to enter into a written agreement with the IRS setting up a schedule of repayment by the applicant.

Senator DEWINE. And that would show up on—would that show up on the computer? Would that information be in there or not?

Mr. WOLFE. I don't know, Senator.

Senator DEWINE. Could that information that is contained in there have been sent electronically outside the office?

Mr. WOLFE. I don't have any knowledge of that, Senator.

Senator DEWINE. Whether it could or could not be?

Mr. WOLFE. I do not know.

Senator DEWINE. You testified earlier that you recommended that the Director of Security be replaced with a Secret Service agent. I think you described it as a nonpartisan professional which would give some institutional memory. Why did you make that recommendation?

Mr. WOLFE. It was my understanding that previous administrations had operated this way. This would give the Office of Administration a nonpartisan person who was not involved with the campaign or a political affiliate and would provide the Office of Administration with a professional who had some good security background, some training, and would assist them in their procedure for updating background investigations and maintaining the process.

Senator DEWINE. You have described your background and you have described what your job is with the Senate committee. Talk to me a little bit about the level of standards you used in making your recommendations.

Senator BIDEN. Senator, before you go to that question, I am confused about one thing Mr. Wolfe just said.

Senator DEWINE. Sure.

Senator BIDEN. Wasn't Mr. Easley in charge of the very office you recommended be made professional at the time? Am I confused?

Mr. WOLFE. At the time, I was told that Mr. Livingstone was responsible for this office. He was the Director of the Office of Personnel Security. There were several entities that performed the same functions. Mr. Easley was one, Craig Livingstone was the other.

Senator BIDEN. I got you, and you thought they should be consolidated?

Mr. WOLFE. Yes, sir.

Senator BIDEN. I see, but Mr. Easley did head up one of the two offices that you thought were redundant?

Mr. WOLFE. Yes, sir.

Senator BIDEN. And Mr. Easley stayed on from the Bush administration to and through, so far, the present administration, correct?

Mr. WOLFE. That is correct.

Senator BIDEN. OK. I was just getting confused as to who we were talking about. Thank you.

Senator DEWINE. Well, let me go back, Mr. Wolfe, and just restate it. Could you describe the level of standards that you used in making the recommendations you made as a result of your security review? In other words, how did you compare the level of security that you should see, let's say, in the Senate Intelligence Committee vis-a-vis what you should see at the White House?

Mr. WOLFE. I felt that Mr. Livingstone's credentials were not sufficient to hold such an important office in the White House. To my knowledge, he had absolutely no background in security, intelligence, or law enforcement. If he had any background in any of these fields, it would have helped him tremendously.

As the Director of the White House Office of Personnel Security, this is not the type of job that I view as an—that allows for on-the-job training. In this respect, the White House, as the head of the executive branch, should be setting the standards for the Federal Government. So I would say, in conclusion, that this office would require the highest level of professionalism.

Senator DEWINE. Would that be at the same level you would assume to find or that you do find, because you head it, in the Senate Intelligence Committee?

Mr. WOLFE. Yes, sir.

Senator DEWINE. My time is up.

Senator Abraham.

Senator ABRAHAM. Just a couple of questions for Mr. Cole. In terms of this master list, we earlier saw on the diagrams ways by which people could be on that list who no longer worked at the White House or had become—you know, but still had their pass. I mean, the main method would, of course, be somebody who left the White House with their pass, which you would not know about. Is that correct?

Mr. COLE. That is correct.

Senator ABRAHAM. So they could have left the employment of the White House. How has the Secret Service historically—how has this list been updated, then? What has been the process of trying to deal with those kinds of situations?

Mr. COLE. Well, during the change of administration, that is why you have a reissue process so you can catch people who are not reported to you as having access in the White House. And it is a very painstaking process, but everyone from the previous administration and the new administration are reissued a new pass and a date which is agreed upon by both the White House and the Secret Service is then convened and that is the cutoff date for all previous passes.

Senator ABRAHAM. So that, normally, to clarify, though, when somebody leaves the White House employ, theoretically they bring their pass in and check out. Is that correct?

Mr. COLE. That is correct.

Senator ABRAHAM. If they don't do that, then they are going to stay on that file, the way the system has worked, until a change of administration?

Mr. COLE. Well, that is why we provide the lists. If someone left and didn't turn in their pass, we would hope that the White House would tell us this person should not remain on the rolls, and at that point we will deactivate that pass. We cannot make an assumption that that person is no longer a valid employee for the White House.

Senator ABRAHAM. Because you wouldn't have the White House payroll records or personnel lists?

Mr. COLE. We are not the appointment office for the White House.

Senator ABRAHAM. Right, so the only way you could possibly clear up the list would be if the White House informs you either that somebody has checked out or takes a list and says these are the folks who no longer worked here based on some other method of inquiry. Is that right?

Mr. COLE. That is correct.

Senator ABRAHAM. OK. Mr. Easley, you are now in charge of the office, I take it, is that correct?

Mr. EASLEY. I would like to correct the record, though. I am not Director of White House Security. I still carry the title of Security Officer for the Executive Office of the President.

Senator ABRAHAM. OK, but you would oversee the vault that we heard about in the last panel and whatever files would be there, is that correct?

Mr. EASLEY. That is correct.

Senator ABRAHAM. I am wondering if you know, based on whatever information you may have acquired since taking on this full assignment, if there are any additional files that were improperly secured, for whatever reason, because the system broke down, because somebody went out to try to get files intentionally, or whatever the method is. Are there other files that have not yet been discussed here that might be inappropriately—that might have inappropriately been secured, in addition to those which we know about?

Mr. EASLEY. Senator, are you talking about the 408, or whatever files we are talking about, or are you talking about all the files?

Senator ABRAHAM. All.

Mr. EASLEY. All the files. Quite truthfully—

Senator ABRAHAM. Have you done an audit? I mean, has there been an effort to—

Mr. EASLEY. Quite truthfully, the vault in which the files are locked up has been sealed by the independent counsel and I can't get into it.

Senator ABRAHAM. So we don't know if there are—but we do know that those files which we had, the 480—what is the current status of those files? Have they likewise been sealed or are they back at the FBI?

Mr. EASLEY. Senator, I can't address that problem. That was before my time. I came into place Tuesday of last week.

Senator ABRAHAM. All right. I have no other questions on my time. I am down to 1 minute, so I will pass for this point.

Senator BIDEN. Mr. Chairman, may I pursue a second round here?

Senator DEWINE. Senator Biden.

Senator BIDEN. Mr. Easley, you have provided, at least what I read, some interesting testimony to the staff, majority and minority staff, when they talked to you in preparation for this hearing. I might add the only person who the majority was not informed was being—the traditional way in which we do this when a witness comes is majority and minority staff and investigation sit together and interview any prospective witness that is coming up.

So, Ms. Gemmell, Ms. Beck, when you were there, you may not have known it, but there was someone from Senator Hatch's staff and someone from my staff who were there. The only person we were never notified who was being discussed with was Mr. Cole. It is not Mr. Cole's fault, but we had no staff, so Mr. Cole's testimony is a—not that there is anything particularly interesting or unusual about it, but we were unaware of it, and it is not his responsibility; it is ours. I just want the record to show that everybody else both majority and minority staff sat in. We were unaware Mr. Cole had been interviewed, or had received no notice of it.

But at any rate, when majority and minority staff sat with you and asked you questions the other day—yesterday, I guess it was—I thought that your testimony to them was pretty interesting con-

cerning your experience after two of your former bosses, Paul Bateman and Phil Larson, left the White House.

Now, can you describe what happened as they, Bateman and Larson, attempted to move from active passholder status to inactive passholder status in the files kept by—the records kept by the Secret Service?

Mr. EASLEY. I will start with Phil Larson. He told me—he was the Director of Personnel under the Bush administration. He told me that when he reported back to work, he came in for the appointment to get into the building and was told by the Secret Service uniformed officer on duty—

Senator BIDEN. Would you pull that mike closer, please?

Mr. EASLEY. Sure, and was told by the uniformed Secret Service officer on duty that he didn't need an appointment, that he was still showing up as an active passholder.

Senator BIDEN. Now, did he indicate to you he told them he was no longer an active passholder?

Mr. EASLEY. Yes, he did.

Senator BIDEN. So this is a case where this Mr. Larson apparently says to you—this is hearsay, I acknowledge—says to you that he contacted the Secret Service and said, I am no longer active, I am out of here. Then he had to come back in for an appointment after he had left the employ of the White House and they told him, no problem, come on in, you are still listed as active. Is that right?

Mr. EASLEY. Well, I don't know if he contacted the Secret Service to tell them he was leaving. That was before my time, but he came back in on an appointment to begin new employment with the Office of Administration, yes.

Senator BIDEN. Got you, and they said—how long ago had he left the employment of the White House? What was the timeframe?

Mr. EASLEY. I started October 1, 1986, and we are talking about late 1988 or 1989 when he came back in. I believe he indicated to me like 4 or 5 years, but I am not sure; 5 years, maybe.

Senator BIDEN. So he had been gone for 5 years and the uniformed Secret Service guy, or a Secret Service guy tells him, you don't need to be—I mean, you are still listed as active. How about Mr. Bateman?

Mr. EASLEY. In working with the bunnybase, as Mary has described it, Mr. Bateman's name kept showing up as a new regular and we would pull the file. Of course, we all knew he was gone and I went over—I had asked Secret Service a couple of times to remove his name from the list. Finally, I went over to the office and was talking to one of the ladies in the front office and she went to the E-pass system, as she described it to me, and pulled his name up and said, see, I took him out. And she said wait a minute and she went over to the WAVES computer and pulled his name up and he was still showing as active.

Senator BIDEN. Now, Mr. Undercoffer, is that because of that glitch?

Mr. UNDERCOFFER. Well, sir, I can respond to both Mr. Bateman and Mr. Larson.

Senator BIDEN. Well, if you answer the first—I am not much of a computer guy, so answer that one specific question.

Mr. UNDERCOFFER. Could someone repeat the question for me, please?

Senator BIDEN. Mr. Easley said that he went over—Mr. Bateman's name kept coming up as active. He knew he wasn't. He went over to your offices, said, you know, this guy is not active, and the secretary there punches up his name. He comes up on the E-pass system as inactive, but on the WAVES system—she says wait a minute and she presses the WAVES system and the WAVES system still lists him as an active employee of the White House.

Mr. UNDERCOFFER. That is absolutely correct for Mr.—as I had stated previously, Mr. Bateman was one of the eight individuals whose record was not transferred over.

Senator BIDEN. I see, and that is because of this overload problem in the transferring of information.

Mr. UNDERCOFFER. Yes, sir, that is correct.

Senator BIDEN. I see.

Mr. UNDERCOFFER. However, if I may speak to Mr. Larson—
Senator BIDEN. Yes.

Mr. UNDERCOFFER. Mr. Larson—if anybody would care to review the July 8, 1993, WAVES printout, Mr. Larson is not on that printout as being active, and to the best of my recollection, his name came up in my interview last night and when I checked the records, he was not active in the E-pass system prior to, or as of January 20, 1993, either. So I don't know, nor can I even, you know, hypothesize as to why a uniformed division officer would wave him in as being active because both systems said he was inactive.

Senator BIDEN. OK, so either Mr. Easley's information is wrong, that he didn't get waved in, or he got waved in and whoever waved him in just made a serious mistake?

Mr. UNDERCOFFER. Well, I can't speak to that. All I can say to—

Senator BIDEN. Well, let me back up. If he wasn't in the computer list, if he wasn't in the E-pass as active or in the WAVES system as active and the Secret Service agent said to him, you can come on in, then that was a breach of security, correct?

Mr. UNDERCOFFER. You could look at it that way, yes, sir.

Senator BIDEN. How else could you look at it?

Mr. UNDERCOFFER. I wasn't there at the time.

Senator BIDEN. I didn't say that. I am asking, if it occurred—

Mr. COLE. That would be a breach of security.

Senator BIDEN. It would be a breach of security. Thank you, Mr. Cole.

Mr. COLE. Yes.

Senator BIDEN. You guys sound like you are from the State Department. I am used to dealing with the State Department. They never give me a straight answer, but they are trained not to; they are diplomats. You are cops, of sorts, who I have great respect for. That is why I am used to straight answers from cops.

Let me ask you now—one of the real, I thought, informative questions that the Senator from Michigan asked was at some point during a transition period when the new folks coming in want to know who should still be coming in and out of that White House,

because we are talking, what, 10,000 names—in your E-pass system, how many active people, roughly?

Mr. COLE. Active would be more like 6,500, something like that.
Senator BIDEN. 6,500?

Mr. UNDERCOFFER. No, sir. There is 8,003 active passholders in the system.

Senator BIDEN. OK. I am just trying to get proportions. So you are talking about 8,000 active passholders. The only way you know whether they are inactive or not is if they have come to you and said, I am out of here, take my hard pass, take me off the list, or if someone in the new White House calls you and says, take Charlie off the list, he is no longer active, right? They are the only two ways you, the Secret Service, could know to delete their name, or more than 8 years have passed, right?

Mr. COLE. That is correct, that is correct.

Senator BIDEN. OK. Now, so you have got 6,500 names on the active passholder list, a new administration that has demonstrated that they are not the quickest on the uptake, because they weren't even getting their people that they had, that they were hiring, cleared. And you can't do anything about it unless someone tells you, someone meaning the active passholder, or a new person in the White House in charge of that particular department calling you saying they don't work here anymore, right?

Mr. COLE. That is correct.

Senator BIDEN. Now, there is a third way, though, you can do it. You have a drop-dead date. You can say, OK, everybody who has—I am making this up—a blue-colored pass, a hard pass, the one that gets you in now—everybody who has one of those passes has to turn it in on December 1 or June 17, or a date certain, and if you don't come to us and turn it in, show up to us for us to issue you a new one, you are going to be presumed to not have clearance anymore to get in the White House. You are off the E-pass system, correct, or am I—I want to make sure I have got this right.

Mr. COLE. Well, I would like to listen to the whole scenario first and then—

Senator BIDEN. OK, please. I am not trying to—I am just trying to understand this part.

Mr. COLE. Right. That—up to this point, you are correct, OKay.
Senator BIDEN. OK.

Mr. COLE. You are correct.

Senator BIDEN. Now, so if the head of the Secret Service said to you, look, Mr. Cole, put out a notice that everybody has to get a pass reissued on June 1—if you don't come to get a new pass, the old pass isn't going to work anymore. It is like a key in the door; you can't get in the door anymore. You can't get through, right?

Mr. COLE. That is correct.

Senator BIDEN. And that way allows you to purge the list of inactive people and only end up with active, right? Is that the purpose?

Mr. COLE. The purpose is to eliminate people who are already active, not inactive people, people who are active in the system.

Senator BIDEN. Who are active who shouldn't be?

Mr. COLE. And who are identified by the new White House as having a need to be in the White House.

Senator BIDEN. Right, or put another way, the people who are already active who the White House no longer wants to be active. That is the reason to do it.

Mr. COLE. That is correct.

Senator BIDEN. So you end up with a hard list of people who are only the people the White House wants to be active.

Mr. COLE. That is correct.

Senator BIDEN. And so you have roughly 8,000 active passholders and the notice goes out, come in and pick up your new key; if you don't come in, you can't come in, right?

Mr. COLE. Yes.

Senator BIDEN. Now, the President took office on January 20, 1993. This drop-dead date was issued—and I am not suggesting it shouldn't be. I am just trying to figure it out. As I understand it, the drop-dead date was October 31, 1993, 7 months later, right? Is that right, 7 months, 8 months later?

Mr. COLE. That is correct.

Senator BIDEN. Now, is that the way it was in previous administrations? Is the drop-dead date always 4, 6, 8, 10 months after the transition takes place, if you know?

Mr. COLE. I can't speak to the previous administration, but I can speak—what I can speak to is the fact that the new administration was having some problem determining who they really wanted in the White House.

Senator BIDEN. Right.

Mr. COLE. So it would be inconceivable for them to come up with a early drop-dead date because a lot of their own people will not be allowed to come in the White House, so that date was extended far beyond what we wanted.

Senator BIDEN. Got you. Now, Ms. Gemmell, I understand in your testimony to staff, bipartisan staff, it was your understanding that this drop-dead date was always—in previous administrations, was about 9 months after the fact, is that right?

Ms. GEMMELL. Thereabouts, yes, sir.

Senator BIDEN. So there is no difference, so Mr. Cole's assumption was incorrect that it was later than they usually wanted it to be—or I shouldn't say incorrect. It was similar in the Bush administration and similar in the Reagan administration, to the best of your knowledge?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. So I assume the reason why previous administrations did not seek a drop-dead date or the Secret Service did not issue a drop-dead date was because everybody knows in all these administrations there is confusion. You have got to take time to get people in and out, right?

Ms. GEMMELL. Right.

Senator BIDEN. I guess. Now, my question to Mr. Undercoffer, who—am I pronouncing the name correctly?

Mr. UNDERCOFFER. Yes, sir, you are.

Senator BIDEN. Mr. Undercoffer, after the drop-dead date of October 31, 1993, James Baker's name keeps showing up as active. How come?

Mr. UNDERCOFFER. Yes, sir, it did—no, sir, it didn't.

Senator BIDEN. OK, take your time, take your time.

Mr. UNDERCOFFER. May I refer to something?

Senator BIDEN. Yes. This is to find the facts, not to confuse anybody. I am too confused as it is.

Mr. UNDERCOFFER. OK. No. James Baker's name did show up.

Senator BIDEN. After the drop-dead date?

Mr. UNDERCOFFER. After the drop-dead date. James Baker was asked—the current administration asked us to delete Mr. Baker from the rolls as of August 26th of 1993, and his was also one name that when it was passed between the systems didn't get passed through.

Senator BIDEN. OK, let me get this straight. August 26th of 1993, the administration said, figuratively speaking, don't let James Baker in anymore, take his name off the active passholder list, right?

Mr. UNDERCOFFER. Yes, sir.

Senator BIDEN. But it stayed on.

Mr. UNDERCOFFER. It was—

Senator BIDEN. I mean, it didn't get taken off, for whatever the reason.

Mr. UNDERCOFFER. No. To be honest, James Baker would not have been able to get into the White House.

Senator BIDEN. Well, that is not my question. Was he still listed on as an active passholder?

Mr. UNDERCOFFER. He was listed in the WAVES system as an active passholder.

Senator BIDEN. Right.

Mr. UNDERCOFFER. And if you would allow me to explain, sir?

Senator BIDEN. Sure.

Mr. UNDERCOFFER. The passholder data base in the WAVES system is not our critical function data base. That is an administrative data base that we use for administrative purposes.

Senator BIDEN. I got it, but just remember what we are talking about here. Part of this investigation is the thing that allegedly the White House personnel were working off of, or we don't know for certain, was a WAVES list.

Mr. UNDERCOFFER. That is correct, sir.

Senator BIDEN. So it is relevant that he was still on the WAVES list as an active passholder, correct?

Mr. UNDERCOFFER. Yes, sir, and if I may, though, the WAVES list we are speaking off—and going back to the July 7, 1993 list, although there were a few errors that admittedly were ours—because of our reasons, because of our hardware, 379—

Senator BIDEN. Look, I am not even asking—please, don't confuse me. Hold your thought. Don't confuse me so I can get this straight. I am not even asking that. I am just trying to get a chronology here.

James Baker is one of the celebrated names, because he is a great American and a celebrated person, who everybody has been mentioning, Democratic, Republican, everybody, as how could no one know James Baker didn't work there anymore. It is like "Alie's Restaurant." You know, I mean how could they not know he didn't work there anymore?

Now, you get a call or notice from the White House saying James Baker doesn't work here anymore. He ends up on the only list that

gets generated out of your computer, as I understand it, and it comes off the WAVES list.

Mr. UNDERCOFFER. That is correct.

Senator BIDEN. Right, so he comes out on the WAVES list.

Mr. UNDERCOFFER. Yes, he did.

Senator BIDEN. So on August 20, 30, September 17, he is still on the WAVES list. Then another event occurs, not only a letter, but now you have got your drop-dead date. The calls goes out. Everybody out there who has got a pass, come in by October 31; if you aren't in here by October 31, you are cut, you are off, you are off E-pass, you are off WAVES, you are off. Now, that date passes and, as I understand it, on November 7, to pick an arbitrary date, he is still listed on the WAVES list, right?

Mr. UNDERCOFFER. Yes, sir, that is correct.

Senator BIDEN. Now, I am not blaming anybody. Can you explain to me how that could happen?

Mr. UNDERCOFFER. Well, sir, as I had explained, he was one of the—he was a name that the transaction was not passed from E-pass to WAVES, and it is very interesting that you would bring up Mr. Baker's name because—

Senator BIDEN. No, it is not. Everybody has brought it up. He is the most well-known guy on the list.

Mr. UNDERCOFFER. Absolutely, and in reference to the list of 477 names where background investigations were ordered, when I saw his name included on that list, I immediately recalled a conversation I had with Mr. Livingstone some time in early 1994 where Craig had brought to my attention—he says, look, why is James Baker still on the active passholder list, everybody knows that James Baker doesn't work at the White House anymore, which—the question it raised in my mind, then, is how was he included in the list of 477, since everybody knew.

Senator BIDEN. Well, because in December 1993, Mr. Marceca sends a letter over to the FBI saying send his file. That is why. I mean, how can you guys not be confused about your screw-ups and be confused about everybody else's? I mean, it is kind of an arrogance that kind of astounds me. I don't quite understand that.

The FBI date—on December 3, 1993, James A. Baker's name is a file from what everybody says is a political operative—they don't use the word flunky; they are basically saying that. A "political operative," sends over a form that says send me his file, his summary. He is still on your WAVES list. Then, if this was designed—it is not a comment for you to respond to—if this was designed as some secretly—to make sure no one knows they are asking for James Baker's file, it is kind of strange to me that Livingstone would go to you in January and say, hey, how come this guy is still on the list?

That seems to say to me Livingstone didn't know that Marceca had asked for the list because if he knew he asked for the list and he was trying to ask for James Baker's file and he was trying to cover it up, it would seem to me the last guy he would go to acknowledge that James Baker shouldn't be on the list is a Secret Service agent, don't you think?

Mr. UNDERCOFFER. I really don't know.

Senator BIDEN. This is the only thing you don't want to speculate on. You are ready to speculate on everything else, but you don't want to speculate on that. You guys are interesting. OK.

Ms. Gemmell, I have a couple of questions for you. You worked in the White House Office of Personnel Security since 1981, right?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. You don't look old enough to have worked there that long.

Ms. GEMMELL. Thank you.

Senator BIDEN. I am serious; you don't. So you were on hand for the transition from Reagan to Bush, correct?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. And you were on hand for the transition from Bush to Clinton?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Now, during the Reagan-to-Bush transition, did your office update files of holdover employees by requesting previous FBI reports?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Did you decide that a similar project needed to be done during the transition from Bush to Clinton?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. What did you do to obtain the lists to begin this process of updating the files in the transition from Bush to Clinton? What did you do?

Ms. GEMMELL. I made the normal requests from Secret Service.

Senator BIDEN. And what was the request? What did you say—what did you ask them for?

Ms. GEMMELL. I asked for a current pass roster, that I would have to have the full name, the full date of birth, the exact city and State of birth, the Social Security number, and the office.

Senator BIDEN. The office in which they had worked?

Ms. GEMMELL. Yes, sir, along with pass type.

Senator BIDEN. Along with pass type—

Ms. GEMMELL. Yes, sir.

Senator BIDEN [continuing]. Meaning active, inactive?

Ms. GEMMELL. Meaning White House pass versus EOB pass.

Senator BIDEN. I see, OK. Now, what information did the lists that you obtained from the Secret Service, in fact, contain? That is what—you told us what you requested.

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Did you get what you requested?

Ms. GEMMELL. Yes, sir. What I received was to have been just that, a current list, not a list of current and inactive, but current only.

Senator BIDEN. And what did you receive? What, in fact, did the list you received from the Secret Service you requested look like?

Ms. GEMMELL. The size, sir?

Senator BIDEN. Well, in any description, size, number of people, how it was formatted, any description.

Ms. GEMMELL. Again, sir, it was the green and white computerized paper that has been talked about. It was quite voluminous, a couple of inches thick or so.

Senator BIDEN. Now, did you review the lists to see whether or not they were active or inactive people or did you just assume they were all active people?

Ms. GEMMELL. I took it as active only, yes, sir.

Senator BIDEN. Now, was that report you received—you requested and received—was that subdivided by office and then alphabetical within each office?

Ms. GEMMELL. Yes, sir, it was.

Senator BIDEN. So the list you get from Secret Service is not only the list of what you assumed to be all active passholders that has everything from their Social Security number to whatever else you asked for—

Ms. GEMMELL. Yes, sir.

Senator BIDEN [continuing]. But it is then subdivided by office and alphabetical within the office?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Give me an example of some of the offices because most people like me didn't realize there were these subdivisions of offices, not on the list, but period.

Ms. GEMMELL. Yes, sir. That would include, for instance, Office of Administration, Office of Management and Budget. It would include the National Security Council, the Office of the Vice President.

Senator BIDEN. How about the people who worked in the White House mess?

Ms. GEMMELL. Yes, sir. They would be under the military division.

Senator BIDEN. And how about the people who worked and maintained the telephones, the AT&T people I referred to?

Ms. GEMMELL. Yes, sir. There would have been two divisions, one for AT&T and another for C&P Telephone Co.

Senator BIDEN. OK, so the list you received that you requested from the Secret Service, as you began the process of updating the passholder list, was one that was divided by office, assumed to be all active, and within the division of each office listed in alphabetical order?

Ms. GEMMELL. Correct, yes, sir.

Senator BIDEN. Now, how many names were on the list, if you know, and what type of paper was the list written on?

Ms. GEMMELL. Sir, I really don't know how many names were on the list.

Senator BIDEN. Was it hundreds or thousands, would you guess?

Ms. GEMMELL. Oh, I would have said it definitely would have been over 1,000 easily, yes, sir.

Senator BIDEN. And what kind of paper was it on? Was it on paper like you saw here today, this computer paper?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Is this the—it is heavy—is this the kind of paper it was on?

Ms. GEMMELL. Exactly, yes, sir.

Senator BIDEN. OK. Now, did you have a strategy for deciding which division, which department, which office within the White House should be updated first? In other words, you now have this list that is divided by the OMB, the Office of the—the—whatever the

breakdowns are, in alphabetical order. How did you decide—or did you decide personally to start the update? I mean, did you begin the updating process? Did you send any requests over to the FBI asking for previous files?

Ms. GEMMELL. I am sure that we did, yes, sir.

Senator BIDEN. Now, did you decide to do it based on how it appeared in this list, by office, or did you decide or suggest that you start with certain offices and leave others until later?

Ms. GEMMELL. Exactly, sir. The best example I can give you is the General Services Administration where the employees are career employees. They do not serve at the pleasure of the President, so that would have been regarded as a safe entity to start with.

Senator BIDEN. So you would start with the offices like General Services Administration where the assumption would be these people would stay in—they would stay in one administration as well as the other, regardless of the party, because they were career people?

Ms. GEMMELL. Correct, yes, sir.

Senator BIDEN. And the only way that they would be off the list is if they had either retired or they had been fired for some other reason or they died, or something, right?

Ms. GEMMELL. Exactly.

Senator BIDEN. And so they would have the most hold-overs in those offices?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. What is the office that would have the least hold-overs?

Ms. GEMMELL. The White House Office of Personnel, sir, WHOP, and, of course, the Vice President's Office, also.

Senator BIDEN. Now, did you tell anybody or did you decide that the people who worked in the White House staff should be saved for last to be checked out?

Ms. GEMMELL. We always saved the White House staff for last, yes, sir, along with the Vice President's staff.

Senator BIDEN. Do you have any reason to remember whether or not you told anyone in the office who succeeded you in the office that that is how—was the standard way to go about doing it?

Ms. GEMMELL. I am sure I did, yes, sir.

Senator BIDEN. Now, did you begin the Update Project by requesting some files prior to the time you required—retired, not required? Excuse me. Prior to the time you retired—you left the office in what month?

Ms. GEMMELL. August 13, 1993.

Senator BIDEN. So the President comes in in January. You are there from January to mid-August.

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Did you request any previous files?

Ms. GEMMELL. I am sure I did, yes, sir.

Senator BIDEN. OK. Now, a review of the FBI data indicates that it received about 170 previous report requests between July 29 and August 12. So it appears that by the time you retired on August 13, the Project Update was already underway.

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Now, when you met with Anthony Marceca on August 9, did you inform him that he would need to continue working on this Project Update?

Ms. GEMMELL. No, sir, I did not know that he was going to be assigned that project.

Senator BIDEN. OK. Did you tell anybody—did you discuss Project Update with anybody?

Ms. GEMMELL. I did discuss it with Mr. Marceca as to the general guidelines and procedures of it, yes, sir.

Senator BIDEN. You weren't sure he was going to do it, but you discussed that this project had to continue?

Ms. GEMMELL. Along with the general guidelines of the office, yes, sir.

Senator BIDEN. Right. Now, based on your experience working with Secret Service lists, were you aware of instances when names remained on the list when the person had left the White House long ago?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Was this problem exacerbated in any way during this transition period, this meaning from Bush to Clinton, as opposed to Reagan to Bush?

Ms. GEMMELL. Yes, sir, it would have been because it was just not a change of administration, but a party change.

Senator BIDEN. So there is a lot more people involved?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. Now, I want to discuss one—if you don't mind my—OK, I will wait, but this is critical stuff, Mr. Chairman, because—

The CHAIRMAN. How much longer do you think you will be? You have gone way over.

Senator BIDEN. I think it will take me probably—well, I know that, but we are after the facts here.

The CHAIRMAN. Well, I want to cooperate, but I—

Senator BIDEN. Well, there are the questions I have.

The CHAIRMAN. Why don't you finish those questions?

Senator BIDEN. I assume it will take 5 more minutes.

The CHAIRMAN. Then I am going to go to my second round and then that will be it, OK?

Senator BIDEN. Now, I want to discuss with you the importance of using updated lists on a project like this. What, in your view, would be the result if someone was using the list for the Update Project in December 1993 that had been created in May 1993? I am not—we are not making a judgment whether or not that is the list Mr. Marceca did or did not use, but if the list generated in May 1993 were the one being used—begun to be used in December 1993, 6 months later, would that likely create any problems?

Ms. GEMMELL. Yes, sir. It wouldn't even be close to being accurate at that point.

Senator BIDEN. What would the likely problems be?

Ms. GEMMELL. Well, to begin with, by then the purge would have taken place, as the Secret Service was discussing, with the color change which would have accounted for numerous people being dropped from that list. Also, by then you would have a lot of new passholders on the list whose names wouldn't appear at all. Of

course, you would not need them for a periodic reinvestigation, but you would need their names for accuracy.

Senator BIDEN. I see. Now, what information did the lists you obtained from the Secret Service contain? What information relative—we are going back to the time you were actively there. You began—you knew this Project Update had to occur. You contacted the Secret Service and said send me a list of active passholders, right—

Ms. GEMMELL. Yes, sir.

Senator BIDEN [continuing]. So I can begin the project, Project Update?

Ms. GEMMELL. Yes, sir.

Senator BIDEN. What information relative to individuals was on the lists that you obtained from the Secret Service?

Ms. GEMMELL. Yes, sir. Again, it would have been their full name. It would have been their full date of birth, the exact city and State of birth, their Social Security number, their pass type, and their office.

Senator BIDEN. Well, I appreciate you answering all the questions. Correct me now if I am wrong, and I am summarizing this, Mr. Chairman. To the best of your knowledge and testimony, you asked for a list some time prior to August 13 when you left. You asked for a list that contained over 1,000 names when received that had the information, including Social Security, current address, et cetera, and whether they were active or inactive.

When you received a list, whether it was this thick or not, it looked like this, on paper like this.

Ms. GEMMELL. Yes, sir.

Senator BIDEN. And it was divided alphabetically by office.

Ms. GEMMELL. Yes, sir.

Senator BIDEN. And you started with the office or offices that you thought would logically have the most holdovers and you suggested somewhere along the line to somebody who followed you that whoever does this, the last operation, traditionally, for us to update is the Office of the President and the Vice President.

Ms. GEMMELL. Correct.

Senator BIDEN. And that there were—well, thank you. That is all I need now.

The CHAIRMAN. Mr. Libonati, I would like to swear you in as a witness, too, if I can, since you are here.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. LIBONATI. I do.

The CHAIRMAN. Mr. Libonati, you were the former branch chief?

TESTIMONY OF JOHN LIBONATI

Mr. LIBONATI. That is correct, Mr. Chairman.

The CHAIRMAN. Branch chief of what?

Mr. LIBONATI. Branch chief of the Access Control Branch from 1989 to 1991.

The CHAIRMAN. So at all times, at the times leading up to this matter?

Mr. LIBONATI. Up until 1991, I was.

The CHAIRMAN. And then what have you done since then?

Mr. LIBONATI. I currently serve as staff assistant in the Office of Congressional Affairs.

The CHAIRMAN. So you work for the Secret Service?

Mr. LIBONATI. Yes, sir, for 20 years.

The CHAIRMAN. All right. Now, I am going to come to you and Mr. Undercoffer and just—

Senator BIDEN. Mr. Chairman, I am anxious to hear him, but is this gentleman on the witness list? I never heard of him.

The CHAIRMAN. No, but he is here and I just thought we would call on him because he might be able to help us here to understand.

Senator BIDEN. Oh, I see. I got it.

The CHAIRMAN. Now, I might add I will just mention to you that I am going to give you an opportunity to say anything you want to say here at the end, OK, because there have been some criticisms? But before I do, I want to read a letter from Mr. Philip Larson which I think explains in full the event that Mr. Easley discussed and shows that Mr. Easley is mistaken. It is to Ms. Lisa Kaufman, our investigative counsel.

"Dear Lisa, I was surprised at your telephone call in which you related an allegation by Mr. Charles Easley that the U.S. Secret Service had maintained my name as a current employee of the Executive Office of the President even though I had terminated my employment at the EOP months or years before. You have asked me to respond to Easley's allegation. My response, as best I can recall, follows.

"On many occasions, between December 1980 when I left the White House Office and February 1988 when I returned as an employee of the Office of Administration, I went to the New Executive Office Building. The purpose of these visits was to meet with former associates and friends or to conduct business at the Federal Credit Union. In addition, in 1988, I visited the NEOB on a couple of occasions for the purpose of discussing my subsequent employment with the Office of Administration.

"On one of these occasions, I entered the lobby and presented my identification, driver's license, to the officer at the desk and announced that I had an appointment and should have been, quote, 'cleared in,' unquote. I believe the officer was a member of the USSS Uniform Division. The USSS did not begin to provide building security for the NEOB until some time during the early or mid-1980's. Accordingly, I believe this occurred some time after 1985 or 1986.

"The officer entered some data into his desktop terminal, presumably information from my driver's license. I could not see the terminal screen. At that point, he said something like, 'You are a regular employee, you do not have to be cleared.' When I responded by telling him I was a former employee, he again looked at his screen and said something like, 'Right.' At that point, he confirmed that I had been appropriately cleared by whoever it was I was to meet. This was also done on the computer, and he gave me a, 'visitor,' badge and allowed me to enter.

"I apologize for this very sketchy recollection of this event. While I do remember it happening, I cannot recall it with much specificity. I do know that this only happened once out of the many

times I visited the White House complex between late 1980 and early 1988. I do not know what point Mr. Easley has tried to make with regard to this event. I assume it has something to do with the committee's investigation into the White House possession of FBI background files. If so, it should be noted that this event occurred prior to the USSS converting to the system that was in place when I left the EOP in January 1993.

"It should also be noted that in 1990 or 1991, we began an effort to make sure the personnel payroll lists were consistent with the USSS access list and the system that produced the EOP telephone directory, both online and periodic hard copies. Computerized comparisons of these different lists were being made on a monthly basis, beginning in late 1991 or early 1992, perhaps earlier. This procedure was in place when I left in January 1993.

"I also want to say that during all of my experience with the USSS, I found it to be a highly professional and dedicated organization. They have a tough job and they do it very well. Keeping track of so many people who come and go with regularity is extremely difficult. From time to time, we all, the Personnel Division and the USSS, found errors. However, these errors were isolated to an occasional person and did not include large blocks of persons who had previously worked at the EOP. Further, there was a regularly scheduled process in place to identify and correct the errors that were found."

Let me just, in ending, end my second round by giving you folks in the Secret Service a chance to respond, and we are grateful that you are willing to respond, Mr. Libonati, and also Mr. Undercoffer as well.

Mr. LIBONATI. Thank you, Mr. Chairman. Mr. Chairman, I would like—

The CHAIRMAN. And you can respond to anything that has been said here this day.

Mr. LIBONATI. I would like to clarify one issue that, while it may seem odd to the committee that the Secret Service does not take off of a list a name like Marlin Fitzwater or James Baker, that is for good reason. We are not the—we do not make the determination as to who comes off a list. We are not permitted to. Frequently, during the course of a transition, the new administration may want to keep some people on for the purposes of that transition. We could not arbitrarily determine, the Secret Service, that, you know, Marlin Fitzwater probably isn't going to be working here; let's just deactivate his pass.

So I know that that does appear odd to everybody, but that is a fact. That is the way we operate, and always have, and must. So we cannot determine—as odd as it seems and as obvious as it is, we cannot determine who we take off that list. That is—that must be determined by the administration, regardless of how obvious that may be.

The second point I would like to make is—

Senator BIDEN. Mr. Chairman, I agree with that point totally.

The CHAIRMAN. OK.

Senator BIDEN. There is no way they could know that, just like there is no way I think other people could know it either.

The CHAIRMAN. That is right, OK. Go ahead, Mr. Libonati.

Mr. LIBONATI. Second, because the audit process is exhaustive, it is time-consuming, we have, because of the nature of the inquiry, focused on the 477 names and tried to determine if we could have produced an active list or any list that would have reflected all of those people as active passholders during that time period. And so while we—while it is difficult to answer many questions about many time periods or potential errors in 1991 or 1993, we have focused our efforts on the 477 names, and the work that was conducted predominantly by Mr. Undercoffer shows that there is no massive error, that the 379 names that would have been and should have been inactive do not appear on the inactive list during that time period.

Third, to confirm that discovery, 91 of the people on the list of 477 were made inactive between 1984 and 1989. That was prior to the installation of the E-pass system. Those people were installed into our computer system in a bulk download and they were made inactive during that time period. An audit of those names—

Senator BIDEN. What time period are you referring to?

Mr. LIBONATI. In 1989, the people from—that were inactivated from 1984 to 1989 in 1989 were downloaded as inactive into the E-pass system.

Senator BIDEN. Could you also clarify what time period you were talking about earlier when you talked about the 481 names, or 480 or whatever it is? What time period is that? What time period—

Mr. LIBONATI. The 477 names—basically, the 477 names have inactivation dates ranging from 1984 up to current.

Senator BIDEN. No; I understand that, but you said you checked the time period that the 470-some names.

Mr. UNDERCOFFER. Four hundred seventy-seven.

Senator BIDEN. Right. What time period did you check? What do you mean by—what is the time period?

Mr. UNDERCOFFER. I compared that to the WAVES print-out of active passholders dated July 8, 1993.

Senator BIDEN. July 8. That is all I am asking, so that is the time.

The CHAIRMAN. Keep going.

Mr. LIBONATI. Yes, sir.

The CHAIRMAN. I want you to have a chance to explain this.

Mr. LIBONATI. And if I may, I am trying to explain this because we all acknowledge that this is extraordinarily difficult to understand and to do. We have tried to brief staffs in hours and hours and it is difficult, so I am trying to walk through how we determined—how did we determine that the list of 477—that the massive number of inactives on that list could not have appeared as active on our lists in 1993, and that is what I am—

Senator BIDEN. But that is the important point I am making, as of July 1993, right?

Mr. LIBONATI. As of July, and some beyond that, and that is—

Senator BIDEN. But the audit relates—and it is real important that we be precise and I am not arguing with you. I just want to make sure we get it so we don't confuse ourselves more. The audit related to Mr. Undercoffer looking at comparing the 400-and-some names to the July printout, right? Is that right? Is that right?

Mr. UNDERCOFFER. Yes, sir. However—

Senator BIDEN. Would you be prepared to present that audit—
The CHAIRMAN. Let him finish the answer.

Senator BIDEN. OK. Please.

Mr. UNDERCOFFER. Yes, sir. I would also be prepared to give you the status of those 477 names as of January 20, 1993. Those 470—of those 477 people, as of January 20, 1993, 89 people of those—89 of those were made inactive after January 20, 1993. Thirty-four of them are currently active today, and 354 people of those 477 were inactive prior to January 20, 1993, and both the WAVES records and the E-pass records definitively show that. So—

Senator BIDEN. Good. That is important. Would you submit that audit for—would you be willing, Mr. Chairman, to ask that they submit their audit for the record?

The CHAIRMAN. Sure. We will be happy to have it. Please, do that, anything else—

Senator BIDEN. Would you be willing to do that?

The CHAIRMAN [continuing]. Anything else that you can, in writing, that will help us to understand this better because one thing I really kind of resent is people trying to smear, if that is the case, the Secret Service, which does a terrific job down there and throughout our Government. And, frankly, I want you to have this opportunity to explain this.

I have to end this hearing in just about 3 minutes, so I hope you will keep finishing.

Mr. LIBONATI. I have three additional points to confirm—

The CHAIRMAN. Could I ask you one thing before you do that, though?

Mr. LIBONATI. Yes, sir.

The CHAIRMAN. Were the names automatically deactivated from the Secret Service lists in 1993?

Mr. UNDERCOFFER. No, sir, they were not.

The CHAIRMAN. OK. Now, that is a very important point.

Mr. LIBONATI. That is correct, sir.

The CHAIRMAN. OK. Now, finish your three statements and then we are going to end this hearing.

Mr. LIBONATI. Three quick points. In order to check this thoroughly, we then took the 91 names that were deactivated in 1989 that were people that were deactivated from 1984 to 1989 and place them into E-pass as inactive in 1989. The audit determined that not only were they inactive since 1989, but there is an audit trail. Had someone reversed that status, we would have known. The audit trail indicates that those 91 people—their statuses remained inactive since that time. So at least for those 91, for certain, they never were reflected as active passholders since the date they were made inactive in 1989.

Finally, Mr. Chairman and Senator Biden, we conducted—we were trying to determine the range of the search, which was Aa to Go on the subject list. We ran a general search Aa to Go to see how many names we would come up with and it was in excess of 8,000. This list was 477. We ran a—

Senator BIDEN. By office, though? This was Aa to Go with an office?

Mr. LIBONATI. First, it was not office.

Senator BIDEN. OK.

Mr. LIBONATI. And then—and I am going to defer to my colleague for the next number because we then dropped it down to White House operations and came up with other numbers. We tried very hard—

Senator BIDEN. What were the other numbers? Do you know?

Mr. LIBONATI. I will let Mr. Undercoffer answer that on the numbers.

The CHAIRMAN. Well, why don't you finish your statement before he does?

Mr. LIBONATI. I was going to say we tried very hard when this first came out to really see if we were wrong here. I think we made every effort to be self-critical because, forgetting the administrative error, we wanted to make sure that our access system worked and we found that it did work, that the errors did not reflect a problem there, certainly not to the extent of 377 inactive people.

I will let Mr. Undercoffer take it from there. Thank you.

The CHAIRMAN. So anybody that says that the Secret Service gave them a faulty list is just simply not telling the truth?

Mr. LIBONATI. Based on these—based on the audit we did on these 477 names, yes, sir.

The CHAIRMAN. Go ahead.

Senator BIDEN. Well, you acknowledge eight of them were faulty, right?

Mr. UNDERCOFFER. Yes, sir, eight of—

Senator BIDEN. So it is a faulty list. It may not be 380—

The CHAIRMAN. Well, now, wait, wait, wait. I am talking about the whole list and all of the claims that were made of somewhere around 90 people.

Go ahead, Mr. Undercoffer.

Mr. UNDERCOFFER. No, sir. Of the 400—

The CHAIRMAN. You admit the eight. I mean—

Mr. UNDERCOFFER. Of the 477, 8 of them were not deactivated by our system due to a system error. It was a—

Senator BIDEN. That is, it was a faulty list, right?

The CHAIRMAN. Well, wait a minute.

Mr. UNDERCOFFER. No, sir.

Senator BIDEN. At least to that extent it was faulty, right?

The CHAIRMAN. Explain why that isn't significant, compared to what they have claimed you did.

Mr. UNDERCOFFER. No; the original claim, sir, as I understand it, was that we produced a list that had 477 people on it that were listed as active passholders when they were not, and we did an extensive audit of our system, making sure the system did, in fact, work—

Senator BIDEN. I have not claimed that.

The CHAIRMAN. OK.

Senator BIDEN. I have not claimed that.

The CHAIRMAN. All right. Finish what you are saying.

Mr. UNDERCOFFER [continuing]. Making sure that the system did, in fact, work. We tested the criticality of the system to make sure that nobody could get into the White House that were not cleared to, and that part of the system is 100 percent.

Senator BIDEN. And no one has challenged that, have they?

Mr. UNDERCOFFER. No, sir, they haven't.

Senator BIDEN. Right.

Mr. UNDERCOFFER. There was an administrative function in the system that we found eight errors in, which, during the time—during the slice of time in question where we had an increase of 100-percent volume placed on the system, we found that eight errors was an acceptable error rate for that time period.

The CHAIRMAN. Now, explain to the people watching and to us as Senators what they have accused you of and why that can't be so.

Senator BIDEN. Make sure you say who accused you of what, okay? This generic malarkey—

The CHAIRMAN. Well, I am talking about these people who say it is the Secret Service's fault.

Mr. LIBONATI. Senator, I—Mr. Chairman—

Senator BIDEN. What is the Secret Service's fault?

The CHAIRMAN. That they may have provided the faulty list that was used.

Mr. LIBONATI. Mr. Chairman, I am not certain in terms of accusation. Let me respond to this.

The CHAIRMAN. OK.

Mr. LIBONATI. Let me say this. We checked to see if we could have produced a list during the time period in question which would have reflected all, or at least a significant number of those inactive people on one of our active lists.

The CHAIRMAN. Right.

Mr. LIBONATI. That is what we determined. That is what we sought out to do. We make no accusations against anybody. We are just trying to determine if we produced a list with significant numbers or all numbers, 377, inactive people on an active list during the time period in question.

The CHAIRMAN. And your conclusion?

Mr. LIBONATI. Our conclusion is that we did not, and a computer audit trail would confirm that, with the exception of the 8 names.

The CHAIRMAN. And those were within the realm of—

Mr. UNDERCOFFER. They were within the realm of acceptable error in consideration of the volume constraints put on the system at that time.

Mr. LIBONATI. If I can make one other—

The CHAIRMAN. Eight errors out of a total of 24,211, is that right?

Senator BIDEN. No; eight out of—it is—1.5 percent is acceptable, I agree with you, but it is 8 out of 471. That is what the 8 is out of, not out of 7,000—they didn't audit all 24,000. They audited the 471. Isn't that what you are telling me?

The CHAIRMAN. Is that true? Is it just the 471 or the full 24,000?

Mr. UNDERCOFFER. Yes, sir, I only audited the 477.

The CHAIRMAN. OK, all right.

Senator BIDEN. I think it is an acceptable error rate.

The CHAIRMAN. All right. That is all I am trying to speak to.

Mr. UNDERCOFFER. But I can also speak to—sir, I can also speak to the entire 6,000—or I am sorry—8,003 active data base file.

Senator BIDEN. But not the 24,000 my friend speaks about.

The CHAIRMAN. Well, that is fine, that is fine.

Mr. UNDERCOFFER. Only the active data base file because I was the individual that went and manually changed all the records from active to inactive to make the WAVES system match the E-pass system, and to the best of my recollection, I made no more than 20 changes on a passholder base of 8,003 individuals.

The CHAIRMAN. All right. Now, what you are saying is that anybody—

Senator BIDEN. When did you do that, may I ask?

Mr. UNDERCOFFER. I did that beginning in the—beginning in January of 1984 and concluding roughly around September of 1984.

The CHAIRMAN. OK.

Mr. UNDERCOFFER. I am sorry; 1994.

The CHAIRMAN. 1994.

Senator BIDEN. I thought—Mr. Chairman, on that point, I thought you testified—the Secret Service—Mr. Miller testified last week when asked about that—he said, “It is impossible to respond specifically to any reports or inquiry without the examination of these lists. We have undertaken exhaustive efforts to review and examine our system. These efforts continue, although to date we have uncovered no flaws which can be attributed to our passholder data base, known as the E-pass, that would generate an outdated list. I will try to respond to your questions and give you an understanding of the process. Printouts are used administratively by Secret Service personnel to—in the Access Control Branch,” et cetera.

The CHAIRMAN. OK.

Mr. Undercoffer.

Mr. UNDERCOFFER. Sir, may I respond to that? Mr. Miller was speaking in reference to the E-pass system, which was the first system we checked because, as I stated, that is the critical computer system which protects the White House complex. The full audit was not completed until this past weekend, where we spent the entire weekend doing the followup audit comparing the E-pass records to the WAVES system records.

The CHAIRMAN. All right.

Senator BIDEN. May I explain why, because it is important to clarify—

The CHAIRMAN. Yes, but I want to be quick because—

Senator BIDEN. Yes, but it is important to get the facts.

The CHAIRMAN. Well, we have got the facts.

Senator BIDEN. I have not asked any irrelevant question here.

The CHAIRMAN. OK.

Senator BIDEN. I think you just clarified something for me I misunderstood. I want to ask you again. Mr. Miller said, and I will quote—and I am not suggesting it is inconsistent, OK? He says, “These efforts continue, although to date we have uncovered no flaws which can be attributed to our passholder data base, known as E-pass, that would generate an outdated list.”

Now, the reason I am confused is I am told the only system that generates a list is the WAVES data base, that the E-pass system doesn't generate a list. That is part of my confusion. Can you clear that up for me?

The CHAIRMAN. All right. Now, let's clear this up and then we are going to end the hearing.

Mr. UNDERCOFFER. Yes, sir; yes, sir, I can. The E-pass system is capable of generating a list.

Senator BIDEN. But does it? Have you generated a list out of the E-pass system for the White House, or do you do it through the WAVES system?

Mr. UNDERCOFFER. No, sir. I have done it out of the E-pass system, and that is the list that was done on the—for the initial audit.

The CHAIRMAN. All right. Now, this—

Senator BIDEN. No, no. This is an important point, Mr. Chairman, to clarify. If we have got to find the right—if the White House did something wrong, we should hang them.

The CHAIRMAN. Joe, just finish it because I have got to go and I am going to close this out in about 2 minutes. You have the last 2 minutes. You have taken most of the last hour and I—

Senator ABRAHAM. Mr. Chairman, before Senator Biden has his 17th round, could I just make a request to have, after he is finished, one question?

The CHAIRMAN. Yes, sir.

Senator ABRAHAM. Thank you.

Senator BIDEN. When you provide a list requested by, for example, Ms. Gemmell, do you provide it out of the E-pass system or out of the WAVES system?

Mr. UNDERCOFFER. That is provided out of the WAVES system.

Senator BIDEN. That is the only thing that confused me, so that is—

The CHAIRMAN. OK, Senator Abraham, and this is the last question.

Senator ABRAHAM. Thank you, Mr. Chairman. I just have a question for Ms. Gemmell. You indicated in your testimony that you have worked in this process since—between 1981 and 1993, was it, approximately 12 years?

Ms. GEMMELL. Yes, sir.

Senator ABRAHAM. OK. In my earlier questioning and in my questioning at last week's hearing, I have tried to focus on what people did versus what they should have done when they discovered that they had FBI files that were not appropriate; that is, that had been requested improperly because they either knew or certainly should have known that—or at least had suspicion that the file was for someone who was no longer an active employee and in need of access.

So let me just ask you, what would you have done had you discovered that a file or files that were made of people, say, when you arrived in 1981 were made up of people from the previous administration—Jody Powell's file versus Marlin Fitzwater's, to use an illustration that would be symmetrical? What would you have done? What would have been the process?

Ms. GEMMELL. First of all, sir, we would have to notify counsel right away, and I am sure the edict would have been made immediately to pull those files, get them boxed up and back to the FBI, like yesterday.

Senator ABRAHAM. Thank you very much.

The CHAIRMAN. Well, thank you. Now, I want to thank all of you for appearing.

Senator BIDEN. May I ask one concluding question? The list that we keep referring to today, is that—I would ask Ms. Gemmell to look at it. That is the one we have been passing around. Is that the list you worked off of to update the file?

The CHAIRMAN. If you know. If you don't know, say so.

Senator BIDEN. If you know, and if you don't know, tell me.

Ms. GEMMELL. No, sir, it is not the list.

Senator BIDEN. All right, thank you.

The CHAIRMAN. I want to thank you all for appearing. The Secret Service—we will keep this record open for you. Anything you would care to provide us with, we would like to have because—

Senator BIDEN. And for additional questions, Mr. Chairman?

The CHAIRMAN. What?

Senator BIDEN. And for additional questions?

The CHAIRMAN. Yes; if we have written questions, we will certainly keep the record open because we do want to get to the bottom of it, but I think you have been very definitive here today. And I want to personally thank you, Mr. Libonati, for being willing to testify on such short notice, and I think it has meant a lot to this committee and I think it has been very helpful. Thanks so much.

With that, the committee stands adjourned.

[Whereupon, at 4:13 p.m., the committee was adjourned.]

WHITE HOUSE ACCESS TO FBI BACKGROUND SUMMARIES

WEDNESDAY, SEPTEMBER 25, 1996

**U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC.***

The committee met, pursuant to notice, at 10:03 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin G. Hatch (chairman of the committee) presiding.

Also present: Senators Thurmond, Grassley, Brown, Kyl, Abraham, Leahy, and Simon.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH

The CHAIRMAN. Good morning. I have convened this hearing as a part of our continuing inquiry into the matter of the White House's improper acquisition of FBI background reports. I regret that the hearing is taking place so late in the session, but the committee is still just receiving documents from the White House.

As you all may recall, we had two public hearings on this matter earlier this summer. Since those hearings, the committee has requested a number of documents from the White House and conducted a number of interviews. Senator Biden shares my view that when a serious betrayal of fundamental policy is at issue, this committee must do all it can to ensure the people that all efforts are being taken to keep such an outrage from recurring. This is an issue that transcends political parties.

It has been my hope that by striving to learn and make public the facts, this committee could restore some public trust in the FBI, the White House, and in our Government's ability to maintain the integrity of confidential personnel files held in the Government's possession. Thus, this has been a bipartisan inquiry, and I want to thank Senator Biden for his cooperation to date.

Although we have received many of the documents requested, I should point out that the White House has been less than fully cooperative in responding to our inquiry. In a nutshell, obtaining the relevant documents has been a difficult and a protracted process which has proceeded in fits and starts, with relevant documents being produced on the eve of a particular interview or deposition. Indeed, just last night we received a document dump from the White House which included heavily redacted memoranda which appear highly relevant to our inquiry.

Moreover, the present and former White House employees we have interviewed have declined to answer a number of our ques-

tions on various grounds, including dubious assertions of executive privilege, attorney-client privilege, and privacy grounds. As one who has always maintained the highest concern for protecting the privacy concerns relating to confidential personal information, I find it somewhat ironic, to say the least, that information is being withheld from this committee by employees or former employees of this White House based on vague assertions of privacy.

But I do not want to dwell or mean to dwell on that point. The more important fact is that in the past several weeks, we have come across information that raises some significant questions. I would like to be fair and point out at the outset that, to date, we have not uncovered conclusive evidence that the Clinton administration improperly ordered FBI files for the nefarious purpose of looking into the backgrounds of Republican officials. This committee is not about to make unfounded allegations or conclusions. Rather, I believe we must continue our inquiry into what I think we would all agree are significant and troubling questions.

Among the documents provided by the White House just last night are a series of lists. Apparently, the White House's spin this morning—and I understand the White House has been peddling their story in the hallway this morning—is that these lists somehow prove that the improper request of FBI files was just another bureaucratic snafu. But this is just another last-minute attempt to divert attention away from the facts. These lists are basically irrelevant.

The fact is that whatever lists Anthony Marceca used in ordering FBI files, he could just as well have been using the yellow pages. Marceca knew at the time he ordered FBI files that the lists he was using were over-inclusive and that he was ordering files on prior administration officials who did not have current access to the documents. He knew that. Other documents provided by the White House prove this.

More importantly, we have uncovered numerous documents that raise very significant questions about why these files were being ordered. One particular document that has raised a new set of issues was only provided to the committee in the past few weeks, although it had been produced to the independent counsel earlier in the summer. This document is a log in which the Office of Personnel Security recorded when FBI files were checked out from the office. It is merely to point out the obvious to say that this log could be a critical piece of evidence regarding whether the White House made improper use of FBI files.

Not only does this log contain conspicuous gaps, but, moreover, the committee has learned that pages were deliberately removed from the log. We have yet to receive an adequate, conclusive explanation either for these gaps or for the removal of the pages from the log. I hope today's hearing will help us in that regard. Copies of these logs have been provided today. I would like to point out that we have redacted the names of the individuals whose files were identified in order to protect those individuals' privacy.

Other documents have raised more questions. A number of documents make it clear that the Clinton administration was all too aware of the potential uses and abuses of having access to the FBI backgrounds of political adversaries and that they had an espe-

cially keen interest in getting a, "glance at," the background material of Republican officials. For example, Mr. Livingstone sent William Kennedy, who was then associate White House counsel, a memorandum in which he reported that his office would soon be ordering the files of prior administration officials which would provide them, "our first glance at the background information of their employees."

Beyond this, the documents show that the Office of Personnel Security was busy ordering hundreds of FBI files of prior administration officials at a time when it was so far behind in processing the passes of new White House employees that Congress saw fit to request a formal inquiry into the office. Moreover, the documents show serious deficiencies in the operation of the Office of Records Management, including lost and misplaced FBI files and woefully inadequate recordkeeping.

Furthermore, phone logs indicate that months and even years after Anthony Marceca's detail at the Office of Personnel Security ended, Marceca would frequently visit and call Craig Livingstone, oftentimes discussing various investigative leads and opposition research projects. What the documents also show is that Mr. Livingstone was more than just a personnel security officer, notwithstanding the title of his office, but rather often engaged himself in an assortment of political activities.

While none of these matters in and of themselves prove the deliberate abuse of FBI background materials for partisan purposes, or tie any impropriety in the Office of Personnel Security to the White House, taken as a whole I believe they continue to cast a very heavy shadow of suspicion over the White House's access to and use of FBI files.

To assist the committee in its inquiry into this matter and to learn more about the White House's relationship with the FBI, we have called Mr. Howard Shapiro and Mr. Craig Livingstone to testify this morning. We have not called Mr. Anthony Marceca. This committee twice previously called Mr. Anthony Marceca to testify. Each time, he invoked his fifth amendment privilege against compelled self-incrimination. On the second occasion, we heard him during our closed session refuse to answer most of the questions that were put to him. Today, after consultation with Senator Biden, I have decided that we should make public the transcript of our closed session with Mr. Marceca.

At the time of our closed session, we had the option of requesting the Senate to compel Mr. Marceca to comply with this committee's subpoena and testify under oath. Whether Mr. Marceca waived his fifth amendment privilege is unclear, and I have given the matter some thought since that time. I have decided not to pursue Senate approval for the time being. I know that there is little time remaining in this Congress and that a commission decision on this matter at this time would be inappropriate. For now, I will forgo the approval and litigation necessary to see Mr. Marceca testify before the committee.

Also not before us today is Ms. Mari Anderson. Ms. Anderson was Craig Livingstone's executive assistant and was the individual who instructed Mr. Marceca to initiate what has come to be known as, "Project Update." She obviously was a central player in the Of-

fice of Personnel Security for much of the time at issue here and is a key witness who should be able to provide answers to many of this committee's questions.

Unfortunately, Ms. Anderson has, to date, not cooperated with the committee. Her whereabouts have mysteriously remained unknown since the FBI files controversy broke this summer. Members of my staff contacted Ms. Anderson's attorney last week in an attempt to avoid her having to testify before this committee, but her attorney refused to ensure that his client would be available for an interview later in the week.

As a result, last Wednesday this committee voted to issue a subpoena compelling Ms. Anderson to appear at today's hearing. Regrettably, it appears that Ms. Anderson has chosen to avoid service of this committee's subpoena. Although knowing full well that a subpoena for her appearance had been issued, Ms. Anderson has managed to evade service of the subpoena and her attorney has likewise refused to accept service on his client's behalf. Since last Friday, the U.S. Marshals Service has diligently been seeking to locate Ms. Anderson, but has discovered that she has, in effect, gone into hiding.

In addition, we notified Ms. Lisa Wetzl, who followed Ms. Anderson as Livingstone's executive assistant, of our intention to call her as a witness. Notwithstanding early indications from her counsel that she would be present, the committee was notified last night by her counsel that she just simply would not appear today.

In conclusion, of the four people that we have been talking about, of the four people who worked in the Office of Personnel Security during the period in question, one has taken the fifth amendment, another has been avoiding service of our subpoena, and another has chosen not to appear today. Only Mr. Livingstone, who was personally served a subpoena, is present to testify.

Why are so many individuals so reluctant to get this full story out? The inability to definitely settle unanswered questions or explain seriously suspicious documents does little to dispel the notion that there is something sinister afoot.

We have also called to testify Mr. Howard Shapiro, general counsel to the FBI. He testified before this committee in June to explain the FBI report on this matter which he was responsible for drafting. Today, Mr. Shapiro is here to testify about several contacts the Bureau has had with the White House's office, including heads-up about the FBI files matter and the decision to send FBI agents to interview Dennis Sculimbrene. These matters have troubled the public and members of Congress, and will be further explored this morning.

If Senator Leahy would care to represent the minority, we will turn the time to you.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. I do. Thank you, Mr. Chairman. We are holding yet another hearing on White House access to background summary files. I know the chairman and his colleagues on that side of the aisle are just shocked to think that there may be something somewhere somehow at the White House done wrong, and I know

it grieves them terribly to hold such hearings a few weeks before the election. But that is, of course, an item that is totally inconsequential to them, I am sure. I am absolutely positive of that. I was looking at my files about my belief in the Easter bunny and I saw a note to that effect.

Let us talk about what we have here. The appearance of former White House employees who have testified here before is particularly timely. They may be able to shed additional light on certain documents that were just finally released by independent counsel—and I use the word "independent" because that is what it says in the statute—Kenneth Starr and additional documents produced by the White House.

I understand that yesterday the so-called independent counsel finally acceded to the White House request and provided copies of certain documents that had originally been files of the White House Office of Personnel Security. These files had been turned over by the White House to the FBI, which in turn gave them to the independent counsel, who then held on to them. These files included one labeled "Update Project as of 1/94—Marceca," referring to the Army detailee, Anthony Marceca, who was assigned the task of obtaining FBI summary reports for holdover White House employees.

The explanation from the employees at the White House Personnel Security Office for how that office improperly obtained FBI summaries for former Republican administration White House employees has always been that the Secret Service lists were outdated and faulty. It is an explanation for what happened; it is not an excuse for it.

What has been missing are those lists. In the copy of the "Update Project as of 1/94—Marceca" file returned finally by the Independent Counsel were outdated Secret Service lists containing the names of former Republican administration employees. These outdated Secret Service lists were apparently some of the lists used to make requests for FBI summary reports for people who no longer worked at the White House.

One question we should be asking, but I rather expect that this committee will not, is why did the Independent Counsel sit on these documents throughout the summer while Senate and House committees held multiple hearings and grappled with sometimes conflicting testimony about whether the Secret Service could have generated faulty lists.

Indeed, a so-called interim report released last night by Representative Clinger states that "no possible conglomeration of Secret Service lists could have documented what is now believed to be more than 400 individuals as active passholders." It is a good thing that Representative Clinger called it an interim report, since there is already an obvious need for an update, and correction, to its text 12 hours later. I raise these questions just in case they are overlooked by the distinguished chairman and others on his side of the aisle.

We will also hear today from the FBI's general counsel, Howard Shapiro, who has been publicly chastised by Republican members for giving a heads-up to the White House about uncorroborated information in the background file of former White House employee Craig Livingstone, and for giving the White House a pre-publica-

tion manuscript written by a former FBI agent assigned by the FBI to the White House.

Like the Whitewater investigation before it, the investigation of the White House's access to FBI files is now spinning out of control and has assumed a life of its own. We are no longer investigating how the FBI background files for former Republican administration employees were obtained by the White House in late 1993 and 1994. Instead, this focus on Mr. Shapiro's conduct shows that this exercise has ricocheted to become an investigation of the investigation.

The principal criticism of Mr. Shapiro seems to be that he shared with the White House the same information from a 3-year-old memorandum in Craig Livingstone's background file that the FBI had already shared with the House Republican committee staff and a House Republican member. Apparently, it is OK to share it with the Republicans, but for God's sake, don't show it to the Democrats. By doing this, Mr. Shapiro apparently committed the disgrace of denying the Republican member the opportunity to surprise the White House with a document from the FBI background file of a former Clinton administration employee. If you interfere with games of "gotcha," you are doing something wrong.

This document amounts to very shaky double hearsay of what someone reportedly told someone else. The person who supposedly made the statement denies it, and the person who prepared the document does not recall it. But, nevertheless, this document, this shaky document, is being misused in a shabby attempt to link the First Lady with the hiring of Craig Livingstone to work at the White House Personnel Security Office.

The effort to link the First Lady with the hiring of Mr. Livingstone is old, discredited news. All the principals involved—Mr. Livingstone, former White House counsel Bernard Nussbaum, and former associate White House counsel William Kennedy—have denied that the First Lady had anything to do with the hiring of Mr. Livingstone. So we are now seeing the new focus of Mr. Shapiro's contacts with the White House. We have now shifted from investigating substance to investigating form. Who said what to whom, when, about the investigation has become the question.

Of course, a number of questions could be raised about how information from Mr. Livingstone's FBI background file became fodder for public debate and press reports. Foremost among them is what are congressional staff and Members doing snooping through the FBI files of former Clinton administration employees? Representative Clinger said he was invited by the FBI Director to review this file. That begs the question. Again, what are congressional staff and Members doing snooping through the FBI files of former Clinton administration employees?

At the very first hearing in this matter, we heard moving testimony from former Republican administration employees who were upset because summaries of their FBI background reports, not even the full reports, had been requested by the White House. They felt their privacy had been violated even though their full background files were not sent to the White House.

Moreover, there was and still is no evidence that information from these summaries was ever used by anyone at the White

House. But now we find out that House of Representatives staff and Mr. Clinger have gone to the FBI, examined full FBI background reports, and made public the contents of those private reports. At the earlier hearing, I expressed what I have said over and over again. As a Vermonter, as a Senator, as a former prosecutor, I hold very highly people's rights to privacy. I believe I have a deserved reputation in this body of fighting for the privacy rights of all.

I was critical of anybody in the White House who might have violated those privacy rights, but when I find that the House of Representatives staff and Mr. Clinger have gone to the FBI and examined full FBI background reports and made public the contents of those private reports, then I am also very critical of them violating people's privacy rights.

The White House and the FBI have instituted new, stringent procedures for release of confidential FBI background files to the White House. These procedures are designed to make sure that sensitive confidential information collected by the FBI is not used for any bad political purpose. If these procedures are good enough for the White House, they should be good enough for the Congress.

It is ironic that more information from the confidential FBI background files has been revealed to the public in the course of congressional hearings than from any action taken elsewhere. As the Congress has talked about how they want to protect everybody's privacy, they have released more confidential FBI background files than anybody else. It is not ironic; it is hypocritical.

For example, it was the House committee that first revealed the names of people whose file summaries were requested. It was the House committee that used information from Mr. Livingstone's file to embarrass him and it is the House chairman who, "went public," with the confidential FBI background memo from the Livingstone background file in a statement he made on the floor of the House.

I realize when we get this close to an election, it becomes a political silly season, but it is one thing to make attacks on those who hold political office and run for it. It is another thing to play fast and loose with those who have never run for elective office and with their confidential reports.

I, for one, feel no more comfortable with the White House having easy, routine access to FBI files than I do with congressional staff and Members having such access. I know how carefully we look at FBI files when we have confirmation for lifetime appointments here. We should do the same with everything else.

In my view, the exemption in the Privacy Act that permits Congress unlimited access to personal Government records otherwise protected by this law is wholly inappropriate, and I will introduce legislation to undo the exemption in the Privacy Act that permits Congress unlimited access because, frankly, in this case Congress has shown that it does not deserve that exemption and cannot responsibly handle it.

Thank you, Mr. Chairman. It is nice to be here.

The CHAIRMAN. Let me just, before we call our first witness, make this comment that the White House would prefer that the public focus on the issue of what list Mr. Marceca was using. This is nothing but a diversion from the real questions here. Why was

the White House ordering FBI files on prior administration officials who it knew no longer worked in the White House, and what happened with the files when they were in the White House?

At this point, I would like to submit the statement of Senator Simpson.

[The prepared statement of Senator Simpson follows:]

PREPARED STATEMENT OF HON. ALAN K. SIMPSON, A. U.S. SENATOR FROM THE STATE OF WYOMING

Mr. Chairman, evidence has come to light in recent weeks that Hillary Clinton seems to have encouraged the selection of Craig Livingstone as Director of the White House Personnel Security Office, and that former presidential counsel Bernard Nussbaum knew well of her support.

Mr. Nussbaum and the White House claim that the notes FBI Agent Dennis Sculimbrene made during a March 1993 interview with Nussbaum were "a fiction." But at the time, Mr. Sculimbrene was merely conducting a routine security clearance interview. Why would an FBI agent make something like that up more than three years before the issue developed any special importance?

It seems to me that improper conduct in this case has extended far beyond the levels of Anthony Marceca and Craig Livingstone. I find it incredible that Mr. Shapiro felt it necessary to call the White House and inform them of what was in the file before congressional staff could read it—and that he also apparently found it necessary to send the White House an advance copy of former FBI Agent Aldrich's potentially embarrassing book.

And why were two FBI agents sent to Mr. Sculimbrene's home to tell him that "the White House was unhappy" with his report? That surely looks like a clear-cut attempt at intimidation to me.

It seems obvious that Mr. Shapiro is acting in the political interests of the White House, and far outside the boundaries of his office. I would strongly urge Attorney General Reno to conduct a thorough investigation into this matter. We simply cannot allow this type of unethical behavior to further mar the public's newly tarnished perception of the vital work conducted by the FBI.

Going back to the original focus of this investigation—I think it is safe to say that the evidence that continues to come in makes it clear that these improper file requests were not simply the result of using "an outdated list." If that were the case, why would the White House have requested David Allen's file in August of 1994? For those of you who don't know, Mr. Allen was Mr. Marceca's supervisor. Mr. Marceca was looking for a promotion at the time Mr. Allen's FBI file was requested by the White House. It strains the imagination to believe that a call from Mr. Marceca to his pal Mr. Livingstone four days before the White House requested a national criminal information center check on Mr. Allen was merely a coincidence.

Every time we turn over a rock in the creek in this case, more slimy critters come crawling out. Rest assured that the members of this committee are going to keep right on turning over the rocks until we know from whence these critters come!

Mr. CHAIRMAN. Today, we are hearing that these lists somehow prove it was all a bureaucratic snafu. This is complete nonsense. The simple fact is this. What list Mr. Marceca was using is irrelevant. He could have been using the White House phone book for all I care. The critical point is that Mr. Marceca was using a list he knew was overinclusive and which he knew included the names of prior administration officials whose files should not have been requested, but he went ahead anyway and ordered FBI files for the individuals on that list, in spite of knowing that.

Now, how do we know this? Besides the fact that any individual who can read a newspaper would recognize that James Baker, Brent Scowcroft, and John Sununu were not Clinton administration officials, we also know that Mr. Marceca knew that it was necessary to narrow down the lists he had. This is proven by the fact that the Personnel Security Office would send memos to particular agencies to identify which individuals were and were not active employees after Mr. Marceca had reviewed their FBI files.

These memos were sent on a rolling basis and indicate that Mr. Marceca had already reviewed the FBI files. Here they are. We are going to get them out here today. You can look at them yourselves. Thus, the simple fact is that Anthony Marceca knew exactly what he was doing when he improperly ordered hundreds of FBI files of prior administration officials.

The only question is who else knew what Mr. Marceca was doing and what else was done with those files. Thus far, those questions are unanswered, and I have to say, people we wanted to testify today, who may provide the answers and may be the only people who can, are either refusing to testify on grounds that they might be incriminated or evading the appropriate subpoena of this committee and going into hiding. So these kinds of things bother me. I don't know why they wouldn't bother everybody in our country. Frankly, it is a very serious thing.

But having said that, we are going to call on you, Mr. Livingston. If we can, we will call on you first.

Senator KYL. Mr. Chairman, might I just offer 1 minute's worth of comments?

The CHAIRMAN. Sure.

Senator KYL. I know you want to get on with the hearing, but I just want to echo what you have said and to commend you for holding these hearings. I also want to state my belief that those who hope that perhaps this whole issue will go away and who want to avoid having more public attention focused on it prior to the election should also consider the possibility that this committee will keep holding hearings even after the Congress is out of session, whether it is before the election or after the election, because at stake here is the question of whether or not American citizens' constitutional rights have been grossly violated, and it is more than just a political suggestion.

You have people who are not testifying because of their concerns for the possibility of criminal charges. You have people who are obviously, as you pointed out, avoiding service of subpoena by this committee. That is extraordinary—

The CHAIRMAN. It is to me, I will tell you.

Senator KYL [continuing]. And cannot be attributed to some kind of a political witch hunt. As a result, I think that, whether Democrat or Republican, members of this committee have to take this matter very, very seriously because it doesn't matter what kind of administration is in office. If the kind of conduct that may have occurred here can occur in the future, then regardless of what political party people are in, they could be subject to the same kind of violation of their rights.

It is this committee's responsibility to move forward. I commend the chairman for moving forward, and I believe that in the end all this is going to come out and it would be far better for the witnesses who have information to share with us to do so under the best of terms rather than under what could be the worst of terms later on.

Thank you, Mr. Chairman.

The CHAIRMAN. Well, thank you. I think those comments are well spoken.

Senator LEAHY. Mr. Chairman, I am perfectly willing to see more hearings. I would hope that we would also include in that, on this question of exemptions to the Privacy Act, whether the House of Representatives has violated their responsibility to that by releasing, as they have, confidential FBI files about people.

The CHAIRMAN. Well, I am not going to judge the House. I have got enough problems having to deal with the White House.

Senator LEAHY. I thought you might not want to, but I just thought I would throw it in for what it is worth. I may raise it now.

The CHAIRMAN. Well, that is OK.

Senator LEAHY. OK.

The CHAIRMAN. That is OK.

Senator LEAHY. I didn't want you to be surprised.

The CHAIRMAN. There are going to be differences on that, I am sure.

Let me just say this, that one of our problems is that we don't get these documents in some regards until the eve of the hearings. They just keep dribbling them out to us and then they accuse us of doing this a month before the election. Well, my gosh, we have an obligation to do this and this isn't going to be the last hearing, it is apparent, because we can't get people to testify. Mari Anderson is going to have to come in and testify, and so she may be in hiding now, but sooner or later we are going to find her and we are going to get her in here to testify because she may be the only one who can answer what happened to some of these things.

Mr. Livingstone, we will have you take the chair first, and if you could raise your right hand? Mr. Livingstone, do you solemnly swear that the testimony you are about to give will be the truth, the whole truth and nothing but the truth, so help you god?

Mr. LIVINGSTONE. I do, sir.

The CHAIRMAN. Thank you.

Now, Mr. Livingstone, I do have a couple of questions about a—

TESTIMONY OF D. CRAIG LIVINGSTONE, FORMER DIRECTOR, WHITE HOUSE OFFICE OF PERSONNEL SECURITY, WASH- INGTON, DC

Mr. LIVINGSTONE. Mr. Chairman.

The CHAIRMAN. Yes? Would you care to make a statement?

Mr. LIVINGSTONE. Well, excuse me. I didn't mean to interrupt you.

The CHAIRMAN. No, no. That is fine.

Mr. LIVINGSTONE. I don't have a prepared statement. I would just like to make a very brief remark.

The CHAIRMAN. Sure.

Mr. LIVINGSTONE. Mr. Chairman and Mr. Leahy, I would just like to make a brief statement that I am here today to continue to cooperate with your committee. Yesterday, I was asked to appear before the House panel which was described as a brief wrap-up interview which lasted some 8, 8½ hours.

Senator LEAHY. I wonder if Mr. Livingstone could pull the—

The CHAIRMAN. Could you pull your mike just a little closer?

Senator LEAHY. As Senator Thurmond would say, "the machine," a little bit closer.

The CHAIRMAN. If you could pull the machine a little bit closer.

Mr. LIVINGSTONE. OK. I am sorry. I was asked to appear for what was described to me as a brief wrap-up interview with the House yesterday and it was about 8, 8½ hours long, and so I am a little tired today, but I will do my best to cooperate with any and all of your questions, as I have done so in the past.

I would like to also state for the record that, again, no one in the Clinton administration or outside of the Clinton administration asked me, ordered me, or requested me to order any files in an improper fashion for any improper reason.

Finally, sir, I would like to point out that my attorney informed me this morning that I have testified or voluntarily appeared for interviews for a total of 94 hours as of today. With that in mind, I am here and happy and ready to answer any questions you have for me, sir. Thank you for the opportunity.

The CHAIRMAN. Well, thank you. We appreciate you being here.

Let me just ask a couple of questions about a memorandum you wrote to Mr. William Kennedy—can you provide these memoranda; you have them there—who was the associate White House counsel with supervisory responsibility over your office. In this memorandum, you state the following, "Once the initial rush subsides, we will begin to request the copies of files from the FBI on carryovers. This will be our first glance at the background information of their employees."

Now, are you familiar with this memorandum, Mr. Livingstone?

Mr. LIVINGSTONE. Sir, it would be helpful for me, if it is a multi-page document, if you just—if you wouldn't mind pointing out to me where you're referring to and I will be able to quickly answer your question. I am sorry.

The CHAIRMAN. We will have somebody come down and show you where it is.

Mr. LIVINGSTONE. OK. I am sorry. I am just trying to help you out.

The CHAIRMAN. Are you familiar with that memorandum?

Mr. LIVINGSTONE. Yes, sir, I am.

The CHAIRMAN. You remember it?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. Now, can you tell me who you meant by, "their employees?"

Mr. LIVINGSTONE. Well, sir, looking at item 3 in this memoranda that was drafted to Mr. Kennedy, it says,

86 FBI files on carryovers. Once the initial rush subsides, we will begin to request copies of files from the FBI on carryovers. This will be our first glance at the background information on their employees.

I think it is pretty self-explanatory, the first part where it says that I was giving him an update on carryover employees. To answer your question directly, sir, on the issue that you are interested in, "on their employees," I assume that meant on previous administration people as related to the topic that is covered under carryover.

The CHAIRMAN. Well, I think the natural question that arises to anybody looking at this is what business was it of yours to determine what is in the background file of any carryovers? They had already been cleared by a previous administration. The memo

clearly suggested you hoped to use the FBI files to learn more about carryovers, and I just would like to know, Mr. Livingstone, what was your keen interest in the background materials of, "their people."

Mr. LIVINGSTONE. I am sorry, Mr. Hatch—

The CHAIRMAN. It certainly raises some serious concerns in my mind.

Mr. LIVINGSTONE. I am sorry, Mr. Hatch. I don't see anything about using FBI files. What I see is that "we will begin to request files from FBI on carryovers. This will be our first glance at the background information on their employees."

Sir, as you are aware, our office's responsibility under associate counsel to the President is to determine suitability for every passholder in the complex. It is perfectly reasonable and it is part of our function to know the personnel that have passes that are under our jurisdiction. That is exactly what is intended and that is exactly what we did.

The CHAIRMAN. As you are aware, the committee has recently been provided copies of the log that the Office of Personnel Security used to record when files were checked out of the office and by whom. There are two particularly curious features on the copy provided to the committee. The first matter I would like to discuss with you are the circumstances by which it came to be that there were two copies of this log.

Our understanding is that on April 4, 1995, the original log was placed in a safe and a photocopy was made of the original, to be used from that point forward. On that day, Ed Hughes, then the staff assistant in your office, wrote on the log, "Records frozen per CL's request." I presume that means Craig Livingstone's request.

Mr. Hughes recalls that you called him from associate White House counsel Chris Cerf's office and told Mr. Hughes to stop checking files out of the office. Mr. Hughes, however, apparently was not involved in photocopying the log or placing the original in a safe and does not recall when or how that happened.

Now, Lisa Wetzl, however, who, at the time, was your executive assistant and was responsible for keeping the log, does recall in some detail the events of April 4, 1995. She has told the committee staff that on April 4, 1995, you instructed her to place the original log in the office safe. She further told the committee that you instructed her to make a copy of that original log, but to remove one page from that copy. The reason for removing this page, Ms. Wetzl told us, was that you had concerns about a particular entry on that page and therefore did not want that page to be included in the copy of the log which continued to be used.

Now, do you confirm Ms. Wetzl's testimony on those facts?

Mr. LIVINGSTONE. I am sorry. What was your question?

The CHAIRMAN. Basically, do you confirm what Ms. Wetzl said? She was your executive assistant. She had the responsibility for keeping a log and she recalls some of the details involving the April 4, 1995, time, and she told us, our staff on this committee, that on April 4, 1995, you instructed her to place the original log in the office safe. Is that correct?

Mr. LIVINGSTONE. Well, what I heard you say, sir, is that Mr. Hughes had one story and Ms. Wetzl had another story. I don't recall either incident.

The CHAIRMAN. You don't recall telling her to put the original log in the office safe?

Mr. LIVINGSTONE. No. I can tell you what I recall. What I recall is that—

The CHAIRMAN. Well, just answer my question.

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. Then I will give you time to say that. Let me just get through this step by step—

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN [continuing]. What you do recall and what you don't recall, and then you can comment any way you would like.

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. But what she said to our committee staff is that on April 4, you told her to place the original log, this log containing who took files in and out and the dates, in the office safe. Do you recall that?

Mr. LIVINGSTONE. I have a vague recollection that the reason—

The CHAIRMAN. That you told her to do that?

Mr. LIVINGSTONE [continuing]. That we placed what she referred to as the original log copy in the vault because it was in response to—we had responded to an Independent Counsel inquiry.

The CHAIRMAN. OK, but you tend to recall that you did tell her to put it in the—

Mr. LIVINGSTONE. In response to a subpoena for that document.

The CHAIRMAN. OK. You tend to recall that you did tell her to put the log, the original log, in the safe?

Mr. LIVINGSTONE. No, sir. I don't recall—

The CHAIRMAN. You don't recall that?

Mr. LIVINGSTONE [continuing]. Who I talked to. I was just trying—by way of answering, trying to help you.

The CHAIRMAN. All right. She further told the committee that you instructed her to make a copy of the original log. Do you remember that?

Mr. LIVINGSTONE. I don't remember making it to Ms. Wetzl, but that seems consistent with my memory.

The CHAIRMAN. OK. So you could have done that?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. But she said that when you told her to make a copy of the original log that she was to remove one page from the copy. Do you recall that?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Do you recall telling anybody to remove any pages from the log?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. OK. The reason for removing this page, she said to us, was that you had concerns about a particular entry on that page and therefore did not want that page to be included in the copy of the log which continued to be used. Do you recall anything about that?

Mr. LIVINGSTONE. I am just thinking, pausing to think, sir. I can't think of any issue or any discussion that I had with Ms. Wetzl about removing a page from a log.

The CHAIRMAN. Do you recall yourself or anybody else removing a page from the log?

Mr. LIVINGSTONE. Yes, I recall removing a page from the log.

The CHAIRMAN. So there was a page removed from the log?

Mr. LIVINGSTONE. From the copy of the log.

The CHAIRMAN. From the copy of the log, OK. Can you tell us any reason at all why you asked to have that page removed, or what was the reason for it?

Mr. LIVINGSTONE. I didn't ask to have the page removed. I removed it.

The CHAIRMAN. Can you tell us why you removed it?

Mr. LIVINGSTONE. Yes. I was in discussions with White House Counsel, or my counsel about the document that we are looking at now where it says "records frozen per CL's request" and I was discussing them, why that had happened.

The CHAIRMAN. OK. Your appointment calendar notes that you met with Judge Abner Mikva at 11:30 on April 4, 1995. Did your meeting with Judge Mikva have anything to do with the log?

Mr. LIVINGSTONE. I am sure that it didn't.

The CHAIRMAN. It did not?

Mr. LIVINGSTONE. No, sir.

The CHAIRMAN. Nor did it have anything to do with your instructions to have it frozen on that day?

Mr. LIVINGSTONE. I am sure that it did not.

The CHAIRMAN. OK. Did you discuss freezing the log with Chris Cerf, the associate White House counsel then in charge of the Office of Personnel Security, or anybody else in the White House counsel office or the Office of Personnel Security?

Mr. LIVINGSTONE. As I recall it, sir, when I asked—my memory is that for a short time we did not use the log and when I learned this, I said that I thought that we should use the log, and we continued using the log. The log is something that we used internally. It wasn't a document that we were directed to do. We did it to try and maintain where files were kept.

The CHAIRMAN. In your interview, you said you placed the log in the safe in response to Independent Counsel Fisk's request. Is that—

Mr. LIVINGSTONE. I believe that is my memory.

The CHAIRMAN. But, see, Mr. Fisk was no longer Independent Counsel in April 1995.

Mr. LIVINGSTONE. Well, then I misspoke.

The CHAIRMAN. So that could not explain why the action was taken.

Mr. LIVINGSTONE. Then I misspoke. Maybe it was Mr. Starr.

The CHAIRMAN. I think it might have been Mr. Starr.

Mr. LIVINGSTONE. I don't have any notes or anything in front of me, sir, that would help me with that.

The CHAIRMAN. I am not trying to give you a rough time. I just want to get these facts down right.

Mr. LIVINGSTONE. As I said, I am not positive on that, but I believe that that is what it was done for.

The CHAIRMAN. Well, as I understand it, Starr got the log in the summer of 1996.

Mr. LIVINGSTONE. That is my memory, sir.

The CHAIRMAN. OK. Can you tell what was on the page that you had taken out, or that you took out?

Mr. LIVINGSTONE. Yes, sir. I believe it is this page here where it says, looking at the original copy which the Independent Counsel had and was stored properly in the vault, "records frozen per CL's request."

The CHAIRMAN. You think that was the page that you took out?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. OK. Now, Mr. Livingstone, I would like to direct you to another puzzling feature of this log. If you turn to the third page of the log—

Mr. LIVINGSTONE. Yes, sir, of the original?

The CHAIRMAN. Yes. You will note that it ends with an entry dated March 29, 1994, and the next page begins with an entry dated September 21, 1994. If this actually is the complete version of the log, it would appear that there were no entries made in the log for nearly 6 months.

Mr. LIVINGSTONE. Yes, sir, I see that.

The CHAIRMAN. Now, this is, to say the least, somewhat odd to us on the committee, especially considering the fact that this gap immediately follows the House's request for a GAO audit of your office. If ever there was a time for your office to be diligent in its recordkeeping, one would think it would have been at that time, then, just after Congress had begun raising concerns regarding your office's performance.

Now, during your interview with committee staff, you made what I believe to be a very important clarification. You told us this, and let me quote here from page 21 of the transcript. "I have learned in the course of the investigation that the documents reflect a 6-month gap, not that there was a 6-month gap, which I think is different."

Now, you certainly were correct that the fact that the copy of the log we currently have contains a gap. It can be explained in one of two ways. Either the log was not used for 6 months or some portion of the log that we presently have is missing. Do you have any idea which is the case?

Mr. LIVINGSTONE. Sir, may I have a copy of my deposition, if we are going to refer to it, just so—it will be helpful for me to look at it.

The CHAIRMAN. Sure.

Mr. LIVINGSTONE. And I am sorry.

The CHAIRMAN. That is all right.

Mr. LIVINGSTONE. If you wouldn't mind restating your question, I will try to answer it.

The CHAIRMAN. On page 21—I will ask it again. It would be page 21 right at the top of the page, line 24. Are you with me?

Mr. LIVINGSTONE. No. What I meant to say—if that is what you thought I said—what I meant—and I did, that was incorrect. What I meant to say is that I have learned in the course of the investigation that the documents reflect a 6-month gap, not that there was a 6-month gap, which I think is different.

Now, there is a 6-month gap, in fact, in this log.

Mr. LIVINGSTONE. Sir, I am reading back to page 20 at the beginning of this line of questions just to refresh my memory.

The CHAIRMAN. Sure.

Mr. LIVINGSTONE. Thank you. I am ready to hear your question again.

The CHAIRMAN. OK, let me just say this. Now, when you said, "I have learned in the course of the investigation that the documents reflect a 6-month gap, not that there was a 6-month gap, which I think is different,"—now, you were correct on that. There was, in fact, a 6-month gap, and I think that that can be explained in one of two ways. Either the log was not used for 6 months or some portion of the log we presently have is missing. Now, I would like you to tell me which is the case, to the best of your knowledge. It just wasn't kept, or is there part of the log that is missing?

Mr. LIVINGSTONE. To the best of my knowledge, sir, I believe it would be that it wasn't kept.

The CHAIRMAN. It wasn't kept, but you had a habit of keeping these logs, right?

Mr. LIVINGSTONE. We did our best to do that, sir.

The CHAIRMAN. You did your best to do that, and people checked in, signed their names, checked the file out, put the date on, right?

Mr. LIVINGSTONE. We did try to do that, but as I stated earlier, there was a period of time, evidently, that we didn't do that.

The CHAIRMAN. I see, but you tried your best to do it when you could. Can you definitely say that during this 6-month period of time the log was not kept, or are you just saying, to the best of your knowledge, that might have been the case?

Mr. LIVINGSTONE. No, sir, I cannot say with any definite knowledge that the log was not kept for that 6-month period.

The CHAIRMAN. OK. It could have been kept, right, or it could not have been kept?

Mr. LIVINGSTONE. I cannot say with any definite knowledge that it was not kept.

The CHAIRMAN. Now, as you yourself are aware, there was quite a backlog in your office, at least through the first year of the Clinton administration, resulting in a situation where a large number of White House officials had not received their permanent passes. You are aware of that?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. OK. I have to say that it is troubling that your office was proceeding to order the files of prior administration officials who obviously had already been cleared to receive passes at a time when your office was so far behind in getting permanent passes for new employees. That seems odd to me and something that I am concerned about.

For example, in November 1993, there were 204 new employees whose permanent passes had not yet been processed, but your office was busy ordering the FBI files on 192 prior administration officials. You are aware of that?

Mr. LIVINGSTONE. If you state that, that that is a fact, I will accept your knowledge.

The CHAIRMAN. That is a fact.

Mr. LIVINGSTONE. I don't have any information in front of me to—

The CHAIRMAN. Let me just say these numbers are based on GAO audit figures provided by the White House to us, so assume that they are correct. Similarly, in December 1993, while there were still 188 permanent passes that had not been processed for people in the White House, you ordered FBI files for 254 prior administration officials. And in January 1994, while there was still a backlog of 174 permanent offices, your office ordered FBI reports on 187 prior administration officials. Are you aware of all that?

Mr. LIVINGSTONE. Well, first of all, if I may, not to be argumentative—

The CHAIRMAN. Sure.

Mr. LIVINGSTONE [continuing]. But you said I ordered the—

The CHAIRMAN. Well, your office.

Mr. LIVINGSTONE. Well, I would just like to state for the record, so people don't assume, there is an easy explanation for what you have stated. I just don't—I am not sure what the question is, though, in a general way.

The CHAIRMAN. Well, let me just ask it this way. Can you explain why, between November 1993 and January 1994, you would have ordered the FBI files for 633 prior administration officials while there was a backlog of approximately 200 new White House officials who had yet to receive their permanent passes?

Mr. LIVINGSTONE. Mr. Hatch, I hope that you are aware either through the GAO report or the numerous interviews that your staff has conducted that I tried to get permanent passes issued to staff very early in the administration, month after month after month after month. We did in our office what we could do. We are not allowed to issue permanent passes until that time that we were allowed to issue them. It isn't that I chose to issue those permanent passes at that date. I did what office procedures we could do within the responsibilities of our office, and that would include assigning people to the process of doing Project Update.

The CHAIRMAN. Didn't you yourself agree in your memo to Mr. Kennedy that the files of holdover employees should not be processed until after, in your words, "the initial rush subsides?"

Mr. LIVINGSTONE. Let me get back to the memo, sir.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. I am sorry. Where is that in the memo?

The CHAIRMAN. That is in your memo to Mr. Kennedy—

Mr. LIVINGSTONE. OK, I will just look through.

The CHAIRMAN [continuing]. Under III.

Mr. LIVINGSTONE. Thank you. You are referring to the March 1993 memo?

The CHAIRMAN. Yes.

Mr. LIVINGSTONE. As I recall, the initial rush, to me, meant getting in the many people that were coming into the White House as staff, as volunteers, as interns. There were a tremendous amount of volunteers, as I recall, in the first year of the White House, thousands of them, I believe; certainly, 1,000. And each one of those people require a name check and paperwork done for anyone else that has regular access to the White House, and I believe that is what I was referring to.

The CHAIRMAN. Well, I think if you read this, it says "once the initial rush subsides." Now, is it your view that the initial rush had

subsided even though there were still over 200 permanent passes that had not been processed?

Mr. LIVINGSTONE. Mr. Hatch, I tried to answer your question.

The CHAIRMAN. Yes.

Mr. LIVINGSTONE. I made every effort to get a permanent pass process started very early in the administration. The permanent pass process started when Mr. Kennedy said it could start.

The CHAIRMAN. So it is your testimony, then, here today that your office had done all that it could, to use your language, to process White House passes in November 1993 and January 1994?

Mr. LIVINGSTONE. No, sir, that wasn't my testimony at all. I said early in the administration. As I recall it, it was as early as April or May 1993. I don't want to be sworn onto that date, but it is several months, if not many months, sir, that we tried to do permanent passes, and that can be verified by Agent Cole, who you have interviewed and had deposed, and other people at the White House.

In fact, it was Mr. Cole himself who alerted me to it repeatedly. He said, "Craig, I just want to make sure the administration is aware that it is a critical issue both for law enforcement standpoints and also political standpoints," I believe he said, that you begin the permanent pass process, and I relayed that message to counsel many times.

The CHAIRMAN. Well, you can see why some people are suspicious that while over 200 permanent passes were not being taken care of, were not issued, there were requests for over 600 files.

Mr. LIVINGSTONE. Yes, sir, and I think I have just answered that question as to why that was done.

The CHAIRMAN. OK. Mr. Livingstone, it has been alleged that the U.S. Army used Mr. Marceca as a conduit through which it passed confidential security dossiers to the White House in order to negatively influence particular appointments the Army opposed. Are you aware that Mr. Marceca ever played such a role? Do you have any knowledge of it?

Mr. LIVINGSTONE. Other than what has been shared with me by your staff or other committees, no, sir.

The CHAIRMAN. I am talking about your personal knowledge. Do you have—

Mr. LIVINGSTONE. No, sir, I have no personal knowledge.

The CHAIRMAN. Do you know whether or not that was done?

Mr. LIVINGSTONE. I don't believe that was done, sir.

The CHAIRMAN. You don't believe it was done. After Mr. Marceca's detail at the White House concluded, he continued to call you on what appears to be a fairly regular basis, right?

Mr. LIVINGSTONE. Yes. I think it is public knowledge that Mr. Marceca and I were professional friends.

The CHAIRMAN. Oftentimes, Mr. Marceca called you with requests for advance work or in connection with what appeared to be potential political investigations or opposition research. Is that true?

Mr. LIVINGSTONE. I am sorry. I didn't hear the last part of your—

The CHAIRMAN. Oftentimes, he called you with requests to do advance work or in connection with what appeared to be potential political investigations or opposition research. Is that true?

Mr. LIVINGSTONE. Well, it is a several-part question. I will try to answer it part by part, if I may, sir.

The CHAIRMAN. Sure.

Mr. LIVINGSTONE. Mr. Marceca had expressed an interest in doing advance work. I believe that Mr. Marceca continued to be a volunteer at the White House and helped as a volunteer on events at the White House. I am sorry, and the rest of your question?

The CHAIRMAN. Well, the rest of the question was that he talked to you about what could have been potential investigations or opposition research. Did he ever do that?

Mr. LIVINGSTONE. Well, I remember—I am not sure. I believe the events that I recall is reading it in the Washington Times and then being asked the next day by your committee about the information about this. I know that Mr. Marceca—I remember the phone message that your staff showed me and I responded and, as I recall, I recalled the phone call that he had called me that you had asked—your staff asked me about.

The CHAIRMAN. Fine. Did he ever talk with you about opposition research or political research, or his desire to do any of that during this period of time?

Mr. LIVINGSTONE. I don't know that Mr. Marceca ever talked to me about opposition research or political research, no, sir.

The CHAIRMAN. OK. In one message, Mr. Marceca asked whether you wanted to be his, "agent". In another, he suggested that you, "have your friends and CID investigate certain allegations," made against the USIAA. Could you explain to us why Mr. Marceca repeatedly called you with such requests and suggestions?

Mr. LIVINGSTONE. I can't possibly tell you why Mr. Marceca did anything.

The CHAIRMAN. Did he ever tell you why?

Mr. LIVINGSTONE. I have answered these questions in the interview. Why don't we just—in the spirit of public disclosure and so we can put this issue at rest, why don't we go message by message that you are referring to and I will answer each and every message that you wish to—

The CHAIRMAN. Well, how about this message, or at least about this business that you have your friends at CID investigate certain allegations made against the USIAA?

Mr. LIVINGSTONE. I am sorry. Is that information that I have in front of me?

The CHAIRMAN. It should be in front of you.

Mr. LIVINGSTONE. OK, sir.

The CHAIRMAN. It should be the telephone message of—

Mr. LIVINGSTONE. OK, I am looking for it now. Is the document control number 053058? I can barely read the message. That is why I am asking. Maybe your copy is better than mine.

The CHAIRMAN. Well, it says "I read article about USIAA. * * *" It says, "Tony Marceca, call him back"—I can't read some of that either—"and talk about time," and then the message is, "I read article about USIAA Inspector General in yesterday's Washington Times and suggest you have your friends at CID investigate these allegations. This would be a completely"—I think the rest of it said, "This would be a completely honest outside investigation with no surprise."

Mr. LIVINGSTONE. OK. I am going to have to take your word for that, but I have no reason to dispute it, sir.

The CHAIRMAN. You have no reason to what?

Mr. LIVINGSTONE. Dispute what you just—I just can't read it.

The CHAIRMAN. OK. Well, my point is why would he call you with a request or a suggestion like that.

Mr. LIVINGSTONE. I have no idea, sir.

The CHAIRMAN. You didn't talk to him about it?

Mr. LIVINGSTONE. I can tell you, in the spirit of cooperation with your committee, sir, that Mr. Marceca frequently called me with stuff like this and I told him repeatedly—and I believe I talked to people in my office about it as well—that, you know, I had no interest in pursuing these kind of things.

The CHAIRMAN. Well, let me just put this to bed. Can you state with certainty that Anthony Marceca never talked to you about doing opposition research or political research on people opposed to the President or political candidates or Senators, Congressmen, or prior people who served in the White House?

Mr. LIVINGSTONE. Well, as you are aware, sir, I am not an attorney, so I am not—I am just—I am trying to answer your question about being evasive.

The CHAIRMAN. Sure, that is fine.

Mr. LIVINGSTONE. But at the same time—

The CHAIRMAN. Well, did he or didn't he? I mean, that is not that tough a question.

Mr. LIVINGSTONE. Well, I am not positive what you—if you are saying this is opposition research or political research. I see the message.

The CHAIRMAN. Well, what you would call opposition or political research.

Mr. LIVINGSTONE. I don't dispute that Tony called me about this message at all.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. I mean, that is not the issue. I never took it that Mr. Marceca wanted to do—I see the messages. I have said—I have testified, I have been deposed. I have appeared before voluntary interviews. I have said repeatedly that Mr. Marceca apparently thought that I was a person that he could call on these issues. I told Mr. Marceca I was not the appropriate person; that if he had any knowledge of anything that was wrongdoing that he should report it to the appropriate people within his chain of command.

The CHAIRMAN. Well, if you did do that, then why did he keep—continue calling you? For instance, just this past March, for example, a full 2 years after his White House detail ended, Mr. Marceca left a message which appeared to be providing you with derogatory information about Presidential candidate Bob Dole. It is number 053262. The message stated, "Have the picks of oil companies stealing \$30 million of oil when working with Jim Rowe and Bob Dole shut down investigation." Indeed, you returned calls from Mr. Rowe during this same period.

Now, why, Mr. Livingstone, would Mr. Marceca continue to be providing you with what some would call political dirt if you—as

you suggest, if you had clearly indicated to him that you had no more interest in doing these type of things?

Mr. LIVINGSTONE. You are asking me to add motivation to Mr. Marceca. I have no idea. All I can state for the record is that I did not follow up either of the phone calls that you mentioned.

The CHAIRMAN. OK. Let me just direct your attention to a letter you wrote to, "Jack," who apparently was Jack Quinn, White House counsel.

Mr. LIVINGSTONE. I am sorry, sir. Is that part of the documents in front of me?

The CHAIRMAN. It should be in there.

Mr. LIVINGSTONE. I have it, sir. Thank you.

The CHAIRMAN. OK, OK. At one point you stated that you would, quote, "heed Mr. Quinn's suggestion and continue to serve you well. I'll keep a low profile." Now, for the committee's sake, why did you feel the need to assure Mr. Quinn that you would keep a low profile?

Mr. LIVINGSTONE. Well, sir—

The CHAIRMAN. Had he earlier been critical of your conduct, and if he was, what was the criticism?

Mr. LIVINGSTONE. Sir, in all fairness to Mr. Quinn and to myself, I would like to try and, by way of explanation, explain in detail my knowledge of this document, and I will try to be as brief as I can.

The CHAIRMAN. That is OK.

Mr. LIVINGSTONE. It does say to Jack, which was Mr. Quinn. It says, "Thank you for meeting—taking time for me today. I appreciate your advice and thoughts. I have enclosed this," which means there was an attached document which I don't see—

The CHAIRMAN. Do you know what that was?

Mr. LIVINGSTONE. Yes, sir, I do.

The CHAIRMAN. Could you tell us?

Mr. LIVINGSTONE. It was a list of salaries and staffers.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. "I have enclosed this so you would know that I continue to give you correct information. I will heed your suggestion and continue to serve you well. I will keep a low profile. Yours in service and friendship, Craig Livingstone."

The CHAIRMAN. OK. Could you tell us why you decided to keep a low profile?

Mr. LIVINGSTONE. Yes. I would like you to see the attached document, too, before I offer my explanation, though, because it is a very simple one and I am sure that you will want to move on. If you have seen it, I will discuss it, if you will just tell me you have seen it.

The CHAIRMAN. It is just a list of salary information, as I understand it.

Mr. LIVINGSTONE. OK, with individuals.

The CHAIRMAN. Right.

Mr. LIVINGSTONE. Sir, on that attached piece of paper was the name and salary of my predecessor, Ms. Dannenhauer. This letter or memo or note, if you want to call it that, was attached to that and I gave it to Mr. Quinn, as I recall it, after meeting with him and him telling me that a raise that I had—not a raise, a salary

increase that I understood would be forthcoming was not forthcoming.

He explained to me that that was because the assistant to the President for management and administration, Ms. Jodie Torkelson, had informed him that my salary was already at the level of my predecessor. I knew that not to be true based on the knowledge that I had when I was there for 3.5 years, and I didn't want Mr. Quinn, who I knew to be my employer and supervisor, to think that I had in any way misled him.

So what I did is I attached a copy of that document, highlighted it, and as it says here, "Jack, thank you for making time for me today." I talked to him briefly about the fact that I wasn't going to get the raise; that I wasn't happy about it; that I would probably, as I recall it, start looking for work elsewhere at some point, but I would continue to try and serve him. And when I say here that I gave him correct information, that is substantiated by what I attached to this document, the woman's salary. And when it says here, "I will heed your suggestion, continue to serve you well, and keep a low profile," Mr. Quinn had suggested that, look, this is a moot point; you know, you are not going to get the salary increase; I appreciate your hard work; you know, don't make an issue of this, please. And that is what I said; I will keep a low profile.

Senator LEAHY. Mr. Chairman?

The CHAIRMAN. Senator Leahy, we will turn to you.

Senator LEAHY. Thank you, Mr. Chairman.

Mr. Livingstone, the chairman, Mr. Hatch, in his opening statement said that pages were deliberately removed from the log. That is something I was not aware of and am just hearing. He said pages were deliberately removed not from any copy of the log, but he said deliberately removed from the log. Do you know anything about that?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Mr. Livingstone, did you ever remove pages from the log?

Mr. LIVINGSTONE. From the original log?

Senator LEAHY. Yes.

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Did you ask anyone in your office or anywhere else, for that matter, to remove any pages from the log?

Mr. LIVINGSTONE. I have no recollection of that.

Senator LEAHY. Mr. Chairman, I am wondering, do we have any evidence that pages were actually removed from the log? I am not talking about a copy, but in your opening statement you said pages were deliberately removed from the log. Is that something that could be shared with the rest of us, because Mr. Livingstone has said he never removed pages from the log and he knows that nobody removed pages from the log? This is the first I had heard of it and it would be helpful if we knew if that was so.

The CHAIRMAN. I would be happy to do that. It has been shared with the minority, but apparently you haven't heard about it.

Senator LEAHY. I have not.

The CHAIRMAN. Lisa Wetzl testified to that.

Senator LEAHY. No. I think Mr. Livingstone talked about a copy, but pages actually from the log itself removed?

The CHAIRMAN. Well, he admitted the one page that was removed.

Senator LEAHY. No, no, no, he didn't. I just asked him specifically, did he ever remove a page from the log, not from a copy of the log, but from the log.

The CHAIRMAN. What I was referring to is Lisa Wetzl admission that there was a page removed from the log.

Senator LEAHY. From the log, not from a copy of the log?

The CHAIRMAN. Well, as I understand it, it was from the log.

Senator LEAHY. That is not what she says in her testimony.

The CHAIRMAN. No, wait. Let me clarify it.

Senator LEAHY. She talks about the original being in the safe and that she did not photocopy that, and I am just wondering. I mean, your statement puts a whole different light on this.

The CHAIRMAN. Wait, wait. Let me correct it. The original log was kept intact, as I understand it.

Senator LEAHY. Well, that is an entirely different—

The CHAIRMAN. But there was a page taken from the copy of the original log.

Senator LEAHY. Well, yes, that is an entirely different—

The CHAIRMAN. Well, that is fine. I think he did say that.

Senator LEAHY. Mr. Chairman, this is—I think, in fairness to Mr. Livingstone and in fairness to the White House and in fairness to the U.S. Senate's process, if we are going to talk about something whether—I mean, the implication is that suddenly the log has had pages missed and that somehow we knew about this and all, and then it turns out, well, you didn't really mean the log; you meant a copy which has been discussed right here in an open forum.

So I think if we are going to be dealing with people's reputations, their lives and everything else, whether we agree or disagree with anything done, we want it to be accurate and fair for our own credibility.

Mr. Livingstone, did you ever do opposition political research on behalf of the White House after President Clinton came in?

Mr. LIVINGSTONE. No, sir.

Senator LEAHY. Just also because of the implication of earlier questions, I thought we should have a clear question and a clear answer on the record on that.

Now, Mr. Livingstone, I see on the list turned over by the independent counsel that originally came from your office a number of names. But, first, do you see the list for the National Security Council? Do you have that list? I believe it is being brought to you now.

Mr. LIVINGSTONE. Sir, I don't believe I have it. Do you have a document number? I have quite a few documents here.

Senator LEAHY. I understand. We will get you the—

Mr. LIVINGSTONE. I don't think I have the document, though.

Senator LEAHY. I believe it was just handed to your attorney and it says—

Mr. LIVINGSTONE. Can we have two copies, please.

Senator LEAHY [continuing]. National Security Council, page 7.

Mr. LIVINGSTONE. Are you talking about 056186, sir?

Senator LEAHY. 056192 is the one I have.

Mr. LIVINGSTONE. Is it 6192?

Senator LEAHY. Yes.

Mr. LIVINGSTONE. I have 056192 in front of me, sir.

Senator LEAHY. Basically, what I want to ask you—on the top of the page, do you see where it says “National Security Council” way up at the top? The sentence—

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. Now, directly above the word “National,” is there another word there?

Mr. LIVINGSTONE. It says “WAVES,” sir.

Senator LEAHY. W-A-V-E-S?

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. Now, is this list generated by the White House or is this a Secret Service-generated list?

Mr. LIVINGSTONE. Sir, WAVES is a division of the Uniform Division of the Secret Service and—

Senator LEAHY. So this would indicate that it was a Secret Service-generated list?

Mr. LIVINGSTONE. Yes, sir.

Senator LEAHY. And is there a date on there in the upper left-hand corner of June 10, 1993?

Mr. LIVINGSTONE. Yes, sir, I see the date June 10, 1993.

Senator LEAHY. Is that the date the list was generated?

Mr. LIVINGSTONE. It would be consistent with my memory that when they generated the list that the date at the top of the list was the day the list was generated by the computer.

Senator LEAHY. Now, would that be the time when the so-called update list was begun?

Mr. LIVINGSTONE. Senator, I am not sure what you mean by “begun.”

Senator LEAHY. The Update Project of holdover employees.

Mr. LIVINGSTONE. I am not positive when the Update Project started. Unfortunately, I don’t have my calendars and notes or anything with me. I have not been able to get anything from my office since I went on administrative leave.

Senator LEAHY. Now, on this June 10, 1993 Secret Service list, do you have page 3, which is document 056188?

Mr. LIVINGSTONE. Sir, I am looking at 056188.

Senator LEAHY. And does that have on the Secret Service list Robert Gates?

Mr. LIVINGSTONE. Yes, sir, I see Gates, Robert.

Senator LEAHY. Now, go back to that first page I showed you, 056192. Does the Secret Service have on their list, the Secret Service list of June 10, 1993—do they show Brent Scowcroft?

Mr. LIVINGSTONE. I see Scowcroft, Brent.

Senator LEAHY. Now, on June 10 1993, the time when the Secret Service gave a list with these names on it, these people did not work at the White House, did they?

Mr. LIVINGSTONE. I don’t have any knowledge of that. I don’t believe that is—I believe that is correct that they did not.

Senator LEAHY. Was there any indication on this list whether these people were active passholders or inactive passholders?

Mr. LIVINGSTONE. On this list, 056192, regarding Mr. Scowcroft, Brent, of Ogden, UT, it states that he had a White House pass and

it gives a file number, which would lead me to believe that this person was a current permanent White House passholder. That is what "WHS" would mean.

Senator LEAHY. And nothing on the Secret Service list saying that it was active or inactive? It just is stated the same as everybody else's?

Mr. LIVINGSTONE. No, sir. In my understanding, in looking at this list and other lists similar to it, if it said "WHS," it meant that they had a permanent White House pass.

Senator LEAHY. Thank you. Now, Mr. Livingstone, did you ever give your consent to have Republican committee staff and Republican House Members look through your personal FBI background investigation file?

Mr. LIVINGSTONE. Absolutely not.

Senator LEAHY. Have you ever seen your own file?

Mr. LIVINGSTONE. I discussed my file with Mr. Kennedy.

Senator LEAHY. But have you actually seen it, sat down and read through it and—

Mr. LIVINGSTONE. No.

Senator LEAHY. But apparently the Republican committee staff and Republican House Members have, according to what they say. The House interim report that was released last night was very critical of the Clinton White House for letting political operatives, such as you, have access to that kind of an FBI file.

Now, they did not say anything about congressional staff, many of whom also work on political campaigns—some could even be viewed as political operatives—about having access to your file. Do you feel comfortable with the congressional staff having access, without your consent, to your FBI background investigation file?

Mr. LIVINGSTONE. I am sorry, Senator?

Senator LEAHY. Are you at all comfortable with the fact that the congressional staff, many of whom also work on political campaigns and also could be considered political operatives, to use their terms, have access, without your consent, to your FBI background investigation file?

Mr. LIVINGSTONE. I don't want to—

Senator LEAHY. Would you rather have been asked?

Mr. LIVINGSTONE. I don't want to make a long statement, but, yes, it concerned me, and it concerned me in the fashion in which it was done so that if the information was incorrect that I would have no recourse against Mr. Clinger.

The CHAIRMAN. If the Senator would yield, nobody on the Senate staff has looked at your FBI file.

Mr. LIVINGSTONE. I have no knowledge of that.

Senator LEAHY. That wasn't my question.

The CHAIRMAN. I know. I just wanted to make that clear.

Mr. LIVINGSTONE. Thank you for pointing that out, Senator.

Senator LEAHY. We also didn't issue a report saying that we thought it was terrible that political operatives could look through FBI files at the same time when they were looking through—when their own political operatives were looking through Mr. Livingstone's file without his consent.

I don't want to suggest or be naive enough to suggest that the tentacles of hypocrisy can slip now and then into congressional re-

ports, but some might suggest that has happened here. I come from a very small State and am just a small-town lawyer, and I wouldn't suggest that, but those with more knowledge might.

Now, how long did Mari Anderson work for you?

Mr. LIVINGSTONE. At the White House, sir?

Senator LEAHY. Yes.

Mr. LIVINGSTONE. I believe for about 1½ years.

Senator LEAHY. And how did she leave her job at the White House? What were the circumstances?

Mr. LIVINGSTONE. Sir, I talked about this in the interview with your staff. I don't wish to make any disparaging comments against Ms. Anderson. She worked very hard on the campaign. I believe she wasn't even paid. She, as I recall it, slept on a couch or something in Little Rock. She got a job on my staff at the inaugural and did a good job and I brought her on with me at my staff at the White House. I offer this by way of explanation, very short.

I think Ms. Anderson was very tired and not happy with being an administrative assistant. As I recall it, she wanted to go to law school and had higher ambition for herself and what she would like to do with her life, and she faced, I think, what we call in politics burn-out.

Senator LEAHY. Well, did you have occasion, because of that, to talk to her about the quality of her work?

Mr. LIVINGSTONE. Yes, sir, but I don't in any way want to sit here today and beat up on Ms. Anderson.

Senator LEAHY. Well, let me ask you this. You were aware of the quality of her work. You were aware of the fact that she had been pushing very, very hard and was tired, as you have described, and you used the term "burn-out." Because of all that, would it surprise you to learn that she had failed to keep up with the log of FBI files checked out of the Office of Personnel Security?

Mr. LIVINGSTONE. I don't have any knowledge that that is what happened, sir.

Senator LEAHY. Well, then, let me ask you this. When Lisa Wetzl took over Mari Anderson's job, did you ever speak to her about the log?

Mr. LIVINGSTONE. I am sure that I had conversations with her, sir, but I don't have any specific recollection.

Senator LEAHY. You don't recall what you said to her about the log or the condition of it or the quality of it?

Mr. LIVINGSTONE. No, sir, I don't have a memory of that.

Senator LEAHY. What was the condition of the log when Ms. Wetzl took over Mari Anderson's job, if you recall?

Mr. LIVINGSTONE. I don't have a specific recollection, sir.

Senator LEAHY. Well, there appears to be a 6-month gap in the log from March 1994 until September 1994. During that period, who was responsible for maintaining the log?

Mr. LIVINGSTONE. I don't know when Ms. Anderson departed. If you have that information and could share it with me, I would base my answer on that.

Senator LEAHY. Ms. Anderson departed in September 1994, I am advised.

Mr. LIVINGSTONE. OK.

Senator LEAHY. So during the time when there was this 6-month gap from March 1994 to September 1994, who was responsible for maintaining the log?

Mr. LIVINGSTONE. Well, sir, I am going to look at the log, if I might—

Senator LEAHY. Of course.

Mr. LIVINGSTONE [continuing]. And just see if I recognize the handwriting for the entries. Up until the last entry of where the gap, as described, begins, is what appears to be Ms. Anderson's handwriting and I don't recognize any other handwriting. It is primarily Ms. Anderson almost entirely.

Senator LEAHY. I will go back to my earlier ones. You did not remove pages from the log? I am talking about the actual log itself, not copies or anything else, but the actual log.

Mr. LIVINGSTONE. The original log, no, sir.

Senator LEAHY. And you know of nobody else who removed any pages from the log, the actual log?

Mr. LIVINGSTONE. As I stated earlier, no, sir, nor do I believe that that happened.

Senator LEAHY. I beg your pardon?

Mr. LIVINGSTONE. Nor do I believe that that happened.

Senator LEAHY. I know of no indication. That is why I was surprised at the earlier comments today.

After you went to work for the White House, you did not do opposition political research on behalf of the White House?

Mr. LIVINGSTONE. No, sir, nor was I ever requested to by anyone that I was employed for or anyone outside of the White House.

Senator LEAHY. In fact, would you have been surprised had you been requested to do something like that?

Mr. LIVINGSTONE. I would have been surprised and I would have reported it to counsel.

Senator LEAHY. Thank you.

Mr. Chairman, I am glad we were able to clear up some of those items. I would note, as Mr. Livingstone said earlier this morning, he has voluntarily testified either in open hearings or to staff for some 94 or 96 hours, I believe you said. Is that correct?

Mr. LIVINGSTONE. I believe my attorney informed me it was 94 hours. It is 96.5 now.

Senator LEAHY. And as much as I dearly love the chairman and my colleagues on this committee, I would consider it cruel and unusual punishment to spend 94 or 96 hours with them on this subject, anyway, and I think just about any question I could ever imagine asking has been asked of him and so I have no further questions.

The CHAIRMAN. Well, thank you.

Senator LEAHY. Mr. Chairman, it is always a pleasure to be here with you.

Mr. LIVINGSTONE. Senator—

The CHAIRMAN. Thank you, Senator Leahy.

Yes, Senator Grassley?

Senator LEAHY. I am sorry. Did you have something further you wanted to add to what I had said?

Mr. LIVINGSTONE. I just—I was just wondering if you were finished and if I could just take a 5-minute break.

The CHAIRMAN. We will be happy to recess for 5 minutes and we will start in 5 minutes.

Senator LEAHY. I am finished.

Mr. LIVINGSTONE. Five minutes.

The CHAIRMAN. I have one question to ask and then we will go to Senator Grassley.

Mr. LIVINGSTONE. I am sorry. If you would like me—I—

The CHAIRMAN. No, no.

Mr. LIVINGSTONE. Thank you.

The CHAIRMAN. We will recess for 5 minutes and then we will come right back together.

Senator LEAHY. Mr. Chairman, I would note that when I talked about voluntarily appearing, I realize there was a subpoena on this hearing, but the other 96 hours were voluntary.

The CHAIRMAN. I understand.

[Recess.]

The CHAIRMAN. Mr. Livingstone, just before we turn to Senator Grassley, let me just clarify one thing, since we are on it. You have a copy of the salary list you attached to your letter to Mr. Quinn that we discussed, your handwritten letter to Mr. Quinn that we discussed earlier. Tell me, what does the "I" and "A" and "D" mean on this, under "ST?" That is "status," I take it. What does "I," "A," and "D" mean, or what do they mean?

Mr. LIVINGSTONE. OK. I think I am looking at—

The CHAIRMAN. The actual salary list.

Mr. LIVINGSTONE. OK, sir.

The CHAIRMAN. Yes.

Mr. LIVINGSTONE. I think what I am looking at is a document called—titled "Executive Office of the Resident Roster of Employees," which is a document generated by the Office of Management and Administration.

The CHAIRMAN. OK. Well, what does—

Mr. LIVINGSTONE. By way of clarification, what we are looking at.

The CHAIRMAN. Yes, right. Under "ST," which is "status," what do the letters "I," "D," and "A" mean?

Mr. LIVINGSTONE. I don't know, sir.

The CHAIRMAN. Well, does "I" mean "inactive" and "A" mean "active?"

Mr. LIVINGSTONE. You would be asking me to guess. I don't know.

The CHAIRMAN. You don't know, and you don't know what "D" means?

Mr. LIVINGSTONE. No, sir, and I am not trying to be difficult. This is not a document that I generated—

The CHAIRMAN. Well, is this not a record—

Mr. LIVINGSTONE [continuing]. Something that is generated by Management and Administration.

The CHAIRMAN. OK, but is this not a record of whether the particular individual is active or inactive? For instance, you have Jane Dannenhauer on here with an "I," and she was already gone, right? You used this to show what her salary was at that time—

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN [continuing]. And justify your request for a further salary for you?

Mr. LIVINGSTONE. Yes, sir. As I stated, this is not a Secret Service document. This is a document, I believe, generated by Management and Administration which lists their salaries. I am not familiar with the categories "ST," "PP," "GR," "ST," "PB," "WS."

The CHAIRMAN. If you are not familiar with it, how did you get access to this document, then?

Mr. LIVINGSTONE. I believe that our office had a copy of this supplied to us by Management and Administration.

The CHAIRMAN. I see. Did you have a copy of everybody's salary or the roster of all employees in the White House at the time and those who were not in the White House at the time?

Mr. LIVINGSTONE. As I recall it—

The CHAIRMAN. Is this the only document you had or did you have a complete list in your office?

Mr. LIVINGSTONE. As I recall it, sir, I had this page. I kept this page.

The CHAIRMAN. But you had access to the complete list?

Mr. LIVINGSTONE. I had—this is—well, on top of it says page 1, but I don't know—and it starts with a "C" at the top of the list.

The CHAIRMAN. Well, do you—

Mr. LIVINGSTONE. I am not trying to be evasive. I had this document. I believe that we had a document with the rest of the people at the White House and their salaries.

The CHAIRMAN. All the names, all the 2,000-or-so people?

Mr. LIVINGSTONE. I don't know how many, how big the list was. I don't know if it just included White House Office or—

The CHAIRMAN. I just want to establish—

Mr. LIVINGSTONE. I understand.

The CHAIRMAN. Your best recollection is that you probably had the whole list?

Mr. LIVINGSTONE. Yes, sir.

The CHAIRMAN. OK, and you really were not familiar with what these various symbols, including letters, mean on this list? The only thing you are familiar with is where it says "Sal," s-a-l, which meant "salary," and the names?

Mr. LIVINGSTONE. Well, sir, to be specific and helpful—

The CHAIRMAN. OK.

Mr. LIVINGSTONE [continuing]. What I know about this document is that it is not a Secret Service document, that it appears to be a document generated by Management and Administration. Under it states "Name," which—of course, I know what the names are. Social Security number—I know what Social Security number means.

The CHAIRMAN. OK.

Mr. LIVINGSTONE. "AG"—I would be guessing, but—I am not going to guess. "Organization," I guess, for "org." "ST," "PP," "GR," "ST," I don't know. Salary—I believe "Sal" to be "salary" based on the numerical figures, and "PB" and "WS" I don't know.

The CHAIRMAN. So you don't know whether, under "ST," "I" means "active" and "A" means—or "A" means "active" and "I" means "inactive?"

Mr. LIVINGSTONE. You would be asking me to guess, sir. I don't have knowledge of that.

The CHAIRMAN. But you would have to admit that Jane Dannenhauer at that time was inactive. She was no longer a mem-

ber of the White House staff, is that right? The "I" after her name—

Mr. LIVINGSTONE. December 23, 1993—I believe that you are correct, sir, that Ms. Dannenhauer was no longer at the White House.

The CHAIRMAN. And others, as well, who have "I" after their name were no longer on the White House staff?

Mr. LIVINGSTONE. I don't know.

The CHAIRMAN. OK, all right.

Mr. LIVINGSTONE. But, again, sir, I mean it is not that I am trying to be difficult. It is not—this is not my document.

The CHAIRMAN. Well, one other name that is on here that is quite interesting to everybody involved here is Edwin L. Dale, Jr. That is Billy Dale, right—or, no. Right below Edwin L. Dale, Jr., is Billy R. Dale. That is the Billy Dale that started this whole thing, isn't it?

Mr. LIVINGSTONE. Started what whole thing, sir?

The CHAIRMAN. The whole investigation into Filegate.

Mr. LIVINGSTONE. Well, I am sorry. What is your question? Do I recognize that Billy Dale—

The CHAIRMAN. Is that the same Billy Dale?

Mr. LIVINGSTONE. If Billy Dale of the Travel Office is Billy R. Dale and his Social Security number is that number, then it would appear that it is the same Billy Dale.

The CHAIRMAN. All right.

Senator Grassley.

Senator GRASSLEY. I have more of a statement and some points I want to bring up than a question to the witness, so I hope you will forgive me, Mr. Chairman, but I am talking to you as much as I am to anybody else.

Yesterday, the White House released a list that appeared to be generated by the Secret Service and is the same list that has been talked about this morning, dated January 10, 1993. This list is an alphabetical list of current and former employees of the White House and they are separated by office. There happens to be no indication whether a name is active or inactive on the list. The section "WHO," for "White House Operation," is missing the A through P segment of the alphabet.

Now, we know from Secret Service testimony both before the Senate and the House that the Secret Service prints out a master list periodically for delivery to the Office of Personnel Security, where Mr. Livingstone worked. We also know that that master list has the names of all current and former employees for the past 8 years, and this is whether there is "inactive" or "active" next to their name. I mean, it does have "active" or "inactive" next to their name. The master list does not, however, have the place of birth or the Social Security number for the people that are on the list.

Now, this list that we have from the White House—it was produced yesterday—does list the place of birth, and it also lists the Social Security number for each person, and it does that because it was a customized list. So someone had to go to the Secret Service and request a list with these parameters to be produced.

So the next question we have to ask is why would anyone need the Social Security numbers and the place of birth of inactive White House passholders? I think it is a very legitimate question

and I believe I may be holding—I have the answer here in my hand why it would be this way because I have a request form that is used by the White House to request FBI background files from the FBI.

This particular form that I have here is the one that is used by Anthony Marceca and on the form listed with Mr. Marceca's name and address is here the place of birth and the date of birth and Social Security number. So if anyone, then, wanted to order a file from the FBI, they would have to have the place of birth and Social Security number to get it, which is not normally listed for inactives. Thus, someone who wanted to get those files had to go to the Secret Service and request this June 10, 1993, list as a customized list.

In other words, if you wanted to get FBI files on people from previous administrations, you would ask for a customized list. You need them to add two new columns, one with place of birth, one with Social Security numbers. This allows you to get access, then, to the FBI files. Then you would need to say don't include a status column showing whether the person was active or inactive. That way, you would say plausibly that you didn't know that these people were inactive. The resulting customized list would look exactly like the one that the White House is now peddling for our consideration. To me, Mr. Chairman, it is a crock.

So despite all the huffing and puffing about this newly discovered list, the White House still isn't off the hook. They still can't claim that this was an innocent mistake. That is the way I see it when I see what information you have to have when you ask for information on a specific individual because those columns are on this list that we have got.

The CHAIRMAN. Well, could I just point out this list—what bothers me is here is the White House keeping a list with all these people who didn't work at the White House whose files were requested, and they had access to all these things. They had access to the names and to the fact of whether they were active or inactive. Yet they still were ordering files of people during all this time from Billy Dale on.

Billy Dale's file, it should be pointed out, was received 5 days after this list was printed out, or after this last was—as of December, the date of this list. I mean, you know, I think for all the efforts of our colleagues on the other side to try and make a fuss out of the list, they are irrelevant, and if you look at how much access they had to people who were active, inactive, people who were on the payroll and who weren't, and people who really hadn't even gotten their passes yet out of an office that was supposed to protect the President of the United States and the White House itself and its capacity for secrecy—some pretty important things have been pointed out here.

Senator GRASSLEY. And to call it politics when all we are after is cooperation from the White House and we are not getting that cooperation—

The CHAIRMAN. We are getting it, but it is always late.

Senator GRASSLEY. Always the evening before a hearing.

The CHAIRMAN. Yes, if then. We don't know what they have retained. For instance, I would like to know where these 6 months

of log sheets are. I mean, you know, they can blame Mari Anderson all they want to. She is hiding from us. Maybe she knows where they are or what they contain, but, you know—

Mr. LIVINGSTONE. Excuse me. I am not blaming Mari Anderson for anything.

The CHAIRMAN. I didn't necessarily refer to you.

Mr. LIVINGSTONE. I apologize if you are not.

The CHAIRMAN. We have had indications from others at the White House that Mari Anderson was incompetent and that she didn't do her job and that must be the reason for this loss of 6 months of log sheets which tell who took the files for what reason. That is pretty important stuff. I don't care what anybody says.

But go ahead. Are you through, Senator Grassley? Are you through?

Senator GRASSLEY. Mr. Chairman, I wanted to make that point. I think these documents where they ask for the Social Security number and place of birth—and that information is on this—just dispels that this is that document that was lost.

The CHAIRMAN. Well, I agree with you.

Senator Abraham.

Senator ABRAHAM. Thank you, Mr. Chairman. Mr. Livingstone, I just have a couple of questions that relate to some of the issues that I asked you the last time that you were with us. We ran out of time before I had a chance to follow up on a couple of things.

At that time, I believe I asked you, or maybe it was another member of the committee, essentially the question of who might, beyond you, Mr. Marcea, the others in the security office, have had access to these FBI summaries, and so on, which were acquired with respect to people for whom we later determined they shouldn't have been initially sought.

I am going to let you clarify this in case I don't say it accurately, but you, at least, had never on any occasion taken any of those files, say, to the White House counsel's office or shared them with anybody else. You had not personally done that, is that correct?

Mr. LIVINGSTONE. By "those files" you mean—

Senator ABRAHAM. I mean the FBI summaries for the people who were no longer in the administration, the ones that constitute this list of 3, 4, 500, whatever, that were inappropriately obtained.

Mr. LIVINGSTONE. I don't—based on what you are asking me, I didn't know that they were inappropriately obtained, I believe, until June of this year. I don't know—recall every single file that I have ever reviewed with counsel's office, to answer to your question.

Senator ABRAHAM. So then you may have taken one or more of those summaries and—not of your own volition necessarily, at the request of someone else, and—

Mr. LIVINGSTONE. I have no knowledge of that, sir.

Senator ABRAHAM. You are saying today that you have none whatsoever, no knowledge of—

Mr. LIVINGSTONE. I have no knowledge of that whatsoever.

Senator ABRAHAM. All right. I believe the last time you testified that you had not, but if you are uncertain, that is fine as well. Let me just—

Mr. LIVINGSTONE. I would like to clarify that, though, if I may.

Senator ABRAHAM. Yes.

Mr. LIVINGSTONE. With respect to Mr. Dale's file, I don't have the log or I don't know exactly when, since that is part of this group, counsel reviewed it. There were GAO audits, internal audits, that type of thing, so—

Senator ABRAHAM. Well, one of the questions I think a lot of us have is, I mean there have obviously been concerns raised, allegations, if you will, that somehow these files of political appointees from previous administrations were sought by people in the Clinton White House for political purposes, for purposes that might have been to find out more about these individuals. And I am trying to find out who might have seen these beyond the people directly in your office, and so what I am, I guess, trying to establish is who, in addition to you—you mentioned at the last hearing on my question, I recall, that you weren't the only individual in your office who would take files, as requested by the counsel's office, up to various people in that office.

Could you tell us who else in your office—not necessarily these files, but files, in general, or background summaries, FBI summaries—who else had access to those summaries and who else took them up to the counsel's office or shared them when requested?

Mr. LIVINGSTONE. I understand why we are here today, sir, and I continue to try and cooperate with the committee because I am mortified that the administration—or any intimation by my involvement as the director of the office that the President, or Vice President, Mr. Panetta or anyone else in the White House may have had something to do with this problem. It simply isn't true.

To answer your question directly, the people—I believe I have testified under deposition and before this body that associate counsels to the White House and people that the counsel would direct me to release files to could review files.

Senator ABRAHAM. OK. My—

Mr. LIVINGSTONE. That would include anyone in my office that was on staff.

Senator ABRAHAM. So Mari Anderson conceivably could have taken a file to William Kennedy. Is that—

Mr. LIVINGSTONE. Absolutely.

Senator ABRAHAM. And so could Lisa Wetzl?

Mr. LIVINGSTONE. Yes, sir.

Senator ABRAHAM. And would they always have to get your clearance to do this or was this—

Mr. LIVINGSTONE. No, sir.

Senator ABRAHAM. It was normal procedure for people in the office to do this?

Mr. LIVINGSTONE. I was the supervisor for the office.

Senator ABRAHAM. Right.

Mr. LIVINGSTONE. We actually worked for the associate counsel. We all reported to them and they had that understanding that if I was at lunch or at the wash room or whatever, if someone called—if it was Mr. Kennedy, Mr. Cerf, or our other supervisors, that they were to do what they instructed them to do.

Senator ABRAHAM. Would Mr. Marcea also be in the group of people who might have been—who would have been able to do this who might have been asked for files?

Mr. LIVINGSTONE. That is possible, but I don't recall any specific time.

Senator ABRAHAM. No, I know you—I just mean anybody who was in your shop potentially could have taken files to others in the White House?

Mr. LIVINGSTONE. Not anyone; anyone that was on staff.

Senator ABRAHAM. OK. Any of your staff?

Mr. LIVINGSTONE. Yes.

Senator ABRAHAM. So the interns wouldn't have, but these others—

Mr. LIVINGSTONE. Unless we directed them to.

Senator ABRAHAM. OK, so Marcea, Wetzl, Anderson all could have potentially—I am not arguing here today that they did or they didn't, but they all were in a position and might have taken one of the FBI summaries that was—you later found out were inappropriately obtained—might have taken them to someone else in the White House, if requested?

Mr. LIVINGSTONE. Again, I have no knowledge that is true, but—

Senator ABRAHAM. I know. I am not asking you whether you have knowledge, but they all did this as part of their job to take—

Mr. LIVINGSTONE. Yes, sir.

Senator ABRAHAM. OK, all right.

Mr. LIVINGSTONE. Not to take too much time, but that is possible.

Senator ABRAHAM. OK. The next question I have goes to a broader issue, which is this. As Senator Leahy mentioned earlier, and I think it came out with a number of comments made in the previous hearings about the way the Privacy Act has been, you know, addressed—concern about who has access to things, concern about really—and I am, at least—what should happen if there is inappropriate access, as was the case here; what should have been the proper procedure.

One of the things that we talked about the last time you were here, I believe, was the question of whether or not it would have been more appropriate to have the files—once you realized that they had been secured inappropriately, should they have gone back to the FBI or should they go to, as they were, I guess, the archives in the White House. Senator Biden has raised the question of whether or not it is appropriate—after an administration ends, whether these files, if they were in an archives, should now be in some presidential library.

The question I have is you were hired—and we don't need to go back over the question of who specifically hired you, but at some point you were hired and you were given this position and you obviously served in conjunction with the counsel's office. Were you ever given an in-depth briefing with respect to the Privacy Act when you assumed this job?

Mr. LIVINGSTONE. First of all, I would like to respond not to your question first, but what I saw as a statement about the White House's handling of the now known improperly requested files.

When I learned this, I notified counsel. To the best of my knowledge, within hours the White House made the decision to have the

FBI come and retrieve those files. I don't have any knowledge at all, and I don't believe it is true, that they went anywhere else but to the FBI within a matter of hours.

Senator ABRAHAM. Well, actually, that is not the case. As I recall, wasn't it the case that the first time—when Lisa Wetzl first brought this to your attention 2 years ago, you didn't do anything at that point because it did not occur to you or to anybody in the shop that these were inappropriately in your possession. Is that correct?

Mr. LIVINGSTONE. That is your characterization, Senator, and I don't accept it. Ms. Wetzl did not tell me that these people—these are files that she is archiving from people from the previous administration that didn't work in the White House. It simply didn't happen, nor was that my understanding.

Senator ABRAHAM. Well, when she indicated that there might be a problem with what Tony was obtaining, this was 2 years ago, correct, when you first knew that there were files there that—

Mr. LIVINGSTONE. Yes, and I have testified over and over, and I will be happy again to say today for the record that it was my interpretation that those are people that had come and since left the White House.

Senator ABRAHAM. Right. I am not disputing your testimony. The question I am trying to get at is at the time you made no further investigation of them. They remained in the archives, correct, at that point?

Mr. LIVINGSTONE. I believe that that is correct.

Senator ABRAHAM. I think that is what you testified to.

Mr. LIVINGSTONE. At the White House, yes.

Senator ABRAHAM. Right, and all I am getting at today is the question as to what type of preparation you or the people on your staff for addressing issues such as the Privacy Act, given the responsibilities you had, and I am not criticizing you now. I am raising the question of how you were prepared by your superiors to handle these kinds of sensitive matters.

Were you ever briefed by the counsel's office or anyone in it in-depth about the Privacy Act so that you might have had a different, perhaps, response the first time this issue was raised?

Mr. LIVINGSTONE. No, sir.

Senator ABRAHAM. OK. That is really the question I am trying to get at because it goes to the question of how we might want to address these problems, whether it is congressional staff, White House staff or anybody else, if we are going to examine the Privacy Act. And it goes to a question that concerns me more than some of the other issues that have been raised as to whether or not your superiors at the White House perhaps failed to fulfill a responsibility they had as counsel or higher-level officials to make sure that their staff who were going to deal with sensitive matters had, prior to dealing with them, a full background of familiarity with the Privacy Act and similar matters.

The only other question I guess I have got right now, Mr. Chairman—I know we have another witness here. To your knowledge, has the White House ever attempted to determine which files they still have, if any, that are inappropriately in their possession, for whatever reason they might have gotten there? Was there ever a

process set in place, when you were there, to your knowledge, if any, or since, to go through all these files, these FBI summaries, to determine the specific ones that might not be there appropriately?

Mr. LIVINGSTONE. What I recall, sir, is shortly prior to my requesting to go onto administrative leave that counsel's office gave a list of names to us, supplied a list of names to us, to see if we had the files, and that if we had the files that counsel—they were remanded to counsel.

Senator ABRAHAM. All right. Mr. Chairman, I have no other questions at this time.

The CHAIRMAN. Thank you, Senator.

Mr. Livingstone, thank you. We appreciate you coming. We know that you have given a lot of hours of testimony, but it is pretty important for us to button these things down as best we can. So we will let you go at this point and—

Mr. LIVINGSTONE. Mr. Hatch, could I just say for the record that I continue to be happy—your committee has asked me to answer questions in writing, has asked me to voluntarily appear for an interview. I think it was noted that I appeared today under subpoena. I would have very happily appeared, and I will continue to cooperate with the committee.

The CHAIRMAN. Well, thank you. We will let you go at this point—

Mr. LIVINGSTONE. Thank you, sir.

The CHAIRMAN [continuing]. And reserve our rights to call you back if we need to to clarify some of these matters.

Before we call our next witness, let me just summarize to a degree because I think that we have heard some things today, although, frankly, I think there were more questions raised than were answered. We have learned, for example, that Mr. Livingstone removed a page from the log in his office before making a photocopy of the log and then locking the original away in a safe.

We have learned that there is a 6-month gap in the original log for the Office of Personnel Security and that nobody can confirm whether or not pages were removed from that log. We have also learned that the White House had at its fingertips, indeed, the very week that it was improperly ordering FBI files, a list identifying who was and was not an active White House employee. Just wrapping this up, these are things that bother me, and let me just make two more points.

First, questions do remain and I plan to pursue answers to these questions. Ms. Anderson is going to have to be found and she is going to have to be questioned. Second, members have suggested that there is somehow something, "unjust," or political about our inquiry. What is unjust is that the White House was ordering and rifling through private FBI files of hundreds of individuals, and I would like to get to the bottom of this and plan to do so, however long it may take—why, for what reasons, and were there any true improprieties. These are matters of great concern to me.

The White House has a tendency to blame everybody that they can, and I think they are dumping the blame on Ms. Anderson. Usually, it is Vincent Foster, but we would like to find Ms. Ander-

son and get her answers to some of these questions that are very important.

Mr. Shapiro, let us have you take the witness chair. Well, maybe I should swear you in. Do you solemnly swear to tell the whole truth and nothing but the truth, so help you God?

Mr. SHAPIRO. I do.

The CHAIRMAN. Now, Mr. Shapiro, when you last testified before the committee, I commended you for your hard work in assessing the extent of the FBI's involvement in the FBI files controversy. Your work then was thorough and it was frank, and I personally expressed appreciation for it.

Furthermore, your career both with the FBI and as a Federal prosecutor has been exemplary. Accordingly, I think it is only appropriate that the committee balance recent events against your overall record, and also not pass judgment on your suitability to remain as FBI general counsel until the Office of Professional Responsibility and the Justice Department have completed their review.

Frankly, I have a great deal of respect for you myself.

**TESTIMONY OF HOWARD M. SHAPIRO, GENERAL COUNSEL,
FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, DC**

Mr. SHAPIRO. Thank you, Senator.

The CHAIRMAN. But as everyone now knows, you gave the White House and the Justice Department a heads-up about two different significant matters. One was a pre-publication draft in the FBI's possession of the book written by former FBI agent Gary Aldrich, entitled "Unlimited Access," about his assignment to the White House. The other matter was the discovery in an insert written by FBI agent Dennis Sculimbrene of a statement made by White House counsel Bernie Nussbaum. The statement was that Craig Livingstone came recommended by the First Lady.

As I understand it, you told Kathleen Waldman of the White House counsel's office and Dennis Corrigan, chief of staff to Deputy Attorney General Jamie Gorelick, about Nussbaum's statement, "Shapiro told Jack Quinn about Aldrich's book." As part of this, you told him about it, and then as I understand it, you gave the book to White House counsel's office as well, the pre-book draft.

Mr. SHAPIRO. Yes, sir, the manuscript.

The CHAIRMAN. OK. Now, as well, even though you are not an FBI field agent yourself and have no operational responsibilities at the Bureau, you nonetheless approved a recommendation from one of your subordinates to have one or more agents perform a field interview of Agent Sculimbrene about the remarks that were made by Mr. Nussbaum as White House counsel.

Finally, as Director Freeh earlier said, just as the Bureau has been victimized by the White House, you also allowed yourself to be victimized by the White House. You allowed Jack Quinn to send to you for your comments a draft letter to your boss, Director Freeh, criticizing Congressman Clinger.

Now, all of those acts have clearly troubled, I think, the public and many of my colleagues here in Congress, and my principal concern really is two-fold. First, your actions, in the opinion of many, have brought the FBI into public disrepute.

Second, these missteps—and I think you would have to agree they are missteps—seriously weaken the public's confidence in the ability of the FBI not only to do its job, but also to protect the integrity of secrets and to remain steadfastly impartial in the investigation of criminal conduct.

For instance, the Bureau's field agents rely on the public's willingness to speak, and speak freely and candidly. Yet, the actions that we have been investigating for the past few months are undoubtedly going to have a chilling effect on some people in the public. The public will believe that what it told the field agents will soon become public.

Our job as a committee is to learn the truth, ferret it out, and let the chips fall. In the process, I also hope to ensure that the White House's misguided efforts do not further harm the reputation of the Bureau's field agents and I would like to restore public confidence in law enforcement. Everything else, to me, is basically secondary.

Now, with that in mind, let me just ask you some questions and maybe we can clear this up.

Mr. SHAPIRO. Yes, sir.

The CHAIRMAN. Why do you need a hard pass in order to get into the White House?

Mr. SHAPIRO. Why does one need one, sir, or why did I need—

The CHAIRMAN. Why do you need it? Why do you personally need it?

Mr. SHAPIRO. Why did I personally need one?

The CHAIRMAN. Yes.

Mr. SHAPIRO. Well, actually, as events have developed in recent—it has been a long time since I have been to the White House. At the time we requested it, there were a couple things going on that had me there quite frequently; two matters primarily, sir. One was George Tenet, then senior director of the NSC for intelligence policy, was conducting a review and evaluation of the counterintelligence relationships between the FBI and the CIA, primarily, and also the rest of the intelligence community. That was resulting in 2 or 3 meetings a week that I was attending, representing the FBI.

At the same time, we were engaged in preparing for some sensitive overseas operations of a national security nature that I obviously can't get into, but of the kind that required—due to congressional legislation, required presidential authorization. There was an extensive series of meetings leading up to that, ultimately resulting in a briefing of the President.

At that time, in the spring of 1994, I had been attending meetings on these two matters and I think they account for all, or substantially all, of 14 or 15 meetings in a 3- or 4-week period. At the time, it seemed like this might be something that would go on and the hard pass would just be a convenience. As it turned out, sir, that was an aberration in my service here. I have probably had as many meetings there at the White House as I have had in the 2 years since then. So it has turned out not to be as much necessary as at the time we thought it might be.

The CHAIRMAN. On June 20, the same day that you testified at our earlier Ex-files files hearing, Attorney General Janet Reno con-

cluded that the independent counsel should have jurisdiction over the Ex-files matter because, "It would constitute a conflict of interest for the Department of Justice itself to investigate a matter involving the interaction between the White House and the FBI, a component of the Department of Justice."

Now, in light of that clear statement by General Reno, you should have concluded that contacting the White House about Bernie Nussbaum's statement 2 days before he testified before the grand jury would give rise at least to an appearance of impropriety. That would be at a minimum, it seems to me.

Mr. SHAPIRO. Mr. Chairman, as I have said publicly and repeatedly now, that was clearly an error in judgment on my part. I did not know, as I do now, that Bernie Nussbaum was scheduled to testify before the grand jury, and I made the judgment that this was a matter outside the scope of what they were investigating. And on the basis of that judgment, which may or may not have been correct, I took some actions and I have said that it was unwise to have taken them. It was a mistake. I wish I hadn't done it because precisely as you stated, sir, it was susceptible of giving the appearance of continuing or being involved in a matter that had been assigned to the independent counsel.

The CHAIRMAN. Can you tell us what steps the Director of the FBI has taken to make sure that all matters related to the Ex-files will be left in the competent hands of the independent counsel?

Mr. SHAPIRO. Yes, sir, a number of things. Aside from this specific matter that we are discussing, we turned over all documents that we had gathered in the course of our investigation to the independent counsel's office and have not conducted anything further looking into how those files were gathered.

In addition, the message has come quite clear to all of us to be even doubly attentive and careful about any contacts with the White House, a message that Director Freeh had sent out before but which has been renewed. And, in addition, the Director has ordered a top-to-bottom review of all contacts with the White House by any office or division of the FBI and we are awaiting the completion of that.

The CHAIRMAN. OK. At the time that you gave the White House a heads-up about the Bernie Nussbaum statement, neither Bernie Nussbaum nor Livingstone was then working at the White House. Now, why would the White House have needed to know what was in the insert that had been prepared by Agent Sculimbrene?

Mr. SHAPIRO. Well, again, Mr. Chairman, as I have stated before, my effort there obviously had unintended effects and resulted in appearances that I did not intend, but was an effort to position ourselves as being entirely neutral and impartial between what was, in part—and I don't mean to suggest it was at all, but was—in part, was being treated as a partisan conflict. And in an effort to be absolutely scrupulously neutral when we were providing that information to someone unprecedentedly, to Chairman Clinger and his staff, I made the decision which I have said I regret to simultaneously notify the White House.

The CHAIRMAN. One last question that really has bothered me. You say that you told the Justice Department and the White House about the discovery of Bernie Nussbaum's statement in order to ad-

vise all affected parties about that statement. Why did you not then inform the independent counsel and this committee about that statement?

Mr. SHAPIRO. Well, let me address them separately, Mr. Chairman.

The CHAIRMAN. OK.

Mr. SHAPIRO. As to the independent counsel, again, my decision to do any of this was predicated upon my judgment that this was a matter outside the scope of what the independent counsel was investigating. Had I felt otherwise, I would have told only the independent counsel on the basis of that.

As to this committee, I had been told and advised from our congressional affairs office that we were to treat requests from committees on one House of Congress independently and discreetly from committees on the other House of Congress. But I have addressed that with your staff and will be more careful in the future.

The CHAIRMAN. Well, let me just say this. You know, those two things I find very unfortunate. I am the last to say that people don't make mistakes, and you have certainly acknowledged that you have made them. You have had to do it in public and we had to do it here this morning. I think those were horrendous mistakes for somebody of your background—a law professor, a prosecutor, et cetera. But I also have a lot of respect for you and know that you have very good qualifications otherwise.

Mr. SHAPIRO. Thank you, sir.

The CHAIRMAN. I am just saying, you know, I would really think things through in the future before you take these kinds of actions—

Mr. SHAPIRO. Yes, I certainly will.

The CHAIRMAN [continuing]. Because you are dealing not in the political world anymore. You are dealing with the best interests of everybody in our country—Democrats, Republicans, Independents, anybody—and it has to be above-board and fair and it has to be straightforward and decent.

Nobody is a stronger defender or supporter of the FBI than I am and I want to keep it that way, and it is important that it act with the very best of intentions at all times. But for the life of me, I couldn't see any reason to give the advance copy of the book to anybody. You know, I agree with the New York Times; it deserves being on top of the list because these were observances by an FBI agent with 26 years of credible experience in, I think, the most important law enforcement agency in the world. But I felt like we at least had to listen to your testimony at least on these issues this morning.

Mr. SHAPIRO. Thank you, sir.

The CHAIRMAN. With that, we are going to recess until further notice.

Mr. SHAPIRO. Mr. Chairman, could I just ask that my statement be made a part of the record?

The CHAIRMAN. Without objection. I didn't realize you had a statement or I would have had you give it.

Mr. SHAPIRO. I am happy not to.

The CHAIRMAN. Without objection, we will put the full statement in the record.

[The prepared statement of Mr. Shapiro follows:]

PREPARED STATEMENT OF HOWARD M. SHAPIRO

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you again today. My last appearance was on June 20, when I reported the findings of my limited investigation into the matter of the inappropriate dissemination of FBI background files to the White House.

Before I address the specific questions that pertain to the FBI, I would like to make two points.

First, I deeply regret the appearances created by some of my actions. In hindsight, it is clear that certain matters should have been handled differently and I have said publicly they were mistakes. I understand and appreciate the seriousness of the concerns expressed.

Second, I would like to take a minute to describe the general nature of my activities as FBI general counsel. I do this only because I hope it will help put in perspective the White House contacts at issue today. As FBI general counsel, I am a career civil servant, responsible for managing the FBI's legal staff of 137 people. Since I became general counsel three years ago, Director Freeh completely transformed the FBI's legal division. He involved the general counsel's office in all significant matters facing the FBI to help ensure that all of our investigations and issues are pursued within the letter of the law and consistent with all constitutional and ethical provisions. In addition, I have been charged with ensuring that the FBI's important and diverse law enforcement and national security interests are fully represented outside the bureau, not only to the Department of Justice, but also to other executive agencies, including, from time to time, the White House.

As a result of this newly defined role of the Office of the General Counsel under Director Freeh, I have been privileged to have participated in virtually every major issue which has confronted the FBI. This year alone, I have been involved—often on a daily basis—in the FBI's handling of such matters as the Unabomber Investigation, the negotiations with the Freemen in Montana, the bombing of Khobar Towers in Saudi Arabia, the bombing during the Olympics in Atlanta, the investigation into the crash of TWA flight 800, and in our continuing efforts to enhance the level of cooperation between the FBI and the CIA. In prior years, I was heavily involved in the direction and oversight of the FBI's investigation of the Oklahoma City bombing and in a wide array of other matters, involving every aspect of the FBI's investigative and administrative operations.

In my role as general counsel, I have had occasion to have numerous official contacts with various components of the White House. While I would not characterize these contacts as routine, they have been extremely important to the mission of the FBI. For example, during 1994, at the request of the director, I represented the FBI, along with representatives from our National Security Division, in a long series of meetings held to evaluate and to restructure the counterintelligence relationship between the FBI and the Central Intelligence Agency. I have met on several occasions with National Security Council staff and other White House officials regarding sensitive national security operations. In one such matter, I briefed the President himself regarding a proposed operation requiring presidential approval. I had contact with the White House Counsel's Office on several different issues, including our appeals from decisions by the John F. Kennedy Assassination records review board. More recently, as I acknowledged during my previous testimony, I had several conversations with White House Counsel Jack Quinn to develop and implement the new procedures approved in June to end the improper dissemination of FBI background files to the White House.

In none of these matters has there been even the slightest suggestion that I acted in a partisan or political manner. Director Freeh has on several occasions made it clear to every FBI employee that the FBI must be scrupulously fair and non-partisan when dealing with sensitive issues that have political implications. It is a principle to which I deeply subscribe. I have approached every issue as a career department of justice attorney, without regard to any political calculations.

I do not offer these introductory comments to make excuses. Instead, I am hopeful that the committee will assess my actions in the entire context of my 3-year tenure as general counsel and in recognition of the expanded role of the general counsel under Director Freeh.

With respect to the controversy surrounding the dissemination of FBI files to the White House, in my June 14, 1996 report, I criticized the fact that a posture of undue deference to the White House had developed within the FBI and wrote about the "egregious violations of privacy" my investigation had uncovered. I conducted

that investigation and wrote a hard-hitting report without any concern for political or personal consequences.

Likewise, when I made the decision on July 15, 1996, to advise the White House counsel's office of a paragraph in Mr. Livingstone's background investigation report, I did so in a good faith attempt to remain evenhanded and impartial and wholly without any partisan considerations. At the time, I knew that the question of whether the First Lady was involved in the hiring of Mr. Livingstone had received a great deal of public attention. I also believed that my notification of the White House would occur at roughly the same time that the information would be provided to Chairman Clinger's staff. It is apparent that in this case, my contact with the White House was a mistake. My effort to convey impartiality, although well-intended, has led to consequences which I sincerely regret.

Briefly here is what happened: On July 15, 1996, the FBI was informed that Chairman Clinger wanted his committee staff to review the raw background files of Mr. Livingstone and Mr. Marceca. After checking with the independent counsel's office to ensure that it had no objection, the FBI immediately processed the files for disclosure; that is, the files were reviewed to delete the names of persons who had requested confidentiality. During that routine processing, a paralegal in my office noticed a statement attributed to Bernard Nussbaum that Mr. Livingstone "had come highly recommended to him by Hillary Clinton." This fact was brought to my attention later that same day. I understood that majority staff from the House committee was scheduled to review that file that same afternoon. I decided it was appropriate to also notify the Department of Justice and then the White House counsel's office, for two reasons. First, the circumstances surrounding Mr. Livingstone's employment at the White House had already been the subject of a very public controversy. Second, I believed that such notification would demonstrate that the FBI was fair and non-partisan when dealing with politically sensitive issues. This was a decision which I made and for which I alone am responsible.

My intent was to ensure that both the House committee and the White House, for whom this information had originally been gathered, were made aware of this information roughly simultaneously. Knowing that House committee majority staff was due to examine the materials that same afternoon, I placed a call to the Justice Department, where I advised Dennis Corrigan, the Chief of Staff to the Deputy Attorney General, of the information and of my intent to advise the White House counsel's office. I then called the counsel's office, and spoke with deputy counsel to the President, Kathleen Wallman.

Because of a last minute rescheduling by the committee staff, of which I had been unaware, the majority staff did not in fact see the information until the following day. In order to ensure that the information was equally available, after the staff had cancelled their scheduled appointment, we made an extra effort to ensure that committee staff would come to see the files, and placed calls to both majority and minority staff to encourage them to do so.

When I notified the White House counsel's office, no one there was given access to any documents. The counsel's office was advised about the substance of one paragraph, on an issue that had already been widely discussed in the media. The file itself was only reviewed by Chairman Clinger and one member of his staff.

Let me now address the decision on July 16 to send agents to interview now retired agent Dennis Sculimbrenne who had made the report of the Nussbaum interview. The purpose of the Sculimbrenne interview was strictly and entirely for internal FBI reasons. It was not, and was never intended to be, part of any investigation of the White House files controversy—criminal or otherwise. Neither the Department of Justice nor the White House was notified that the interview would be conducted, and neither was advised on the results. The purpose was solely to determine whether the information reported by Agent Sculimbrenne was accurate and reliable and whether there were underlying notes still in existence to corroborate the report.

The record in our files reflecting the interview of Mr. Nussbaum is an unsigned, undated, uninitialed insert on plain paper. It purports to summarize in one paragraph each, the interviews with three separate people over a three-day period. The date when the summary was prepared is unrecorded. I was advised that the information summarized by Agent Sculimbrenne had previously been publicly and vehemently denied. I knew that Agent Sculimbrenne has himself told staff from this committee of a different recollection about this same subject. I was also well aware of a regrettable recent history of unreliable information emanating from some agents assigned to the White House, and, more generally, that questions had been raised by both Houses of Congress about the accuracy of FBI reporting. Accordingly, after the document was brought to my attention, I recognized that the integrity of FBI reporting was likely to be placed in issue. I readily concurred in the recommendation of my deputy to interview Agent Sculimbrenne on two limited issues: (1) To see

what, if any, recollection he presently had of this interview; and, (2) to determine whether he had any notes or other documentation of the interview.

An agent telephoned Agent Sculimbrene, requested to meet with him, advised him of the subject matter to be discussed, and made an appointment to see him. Nearly 2 hours later, two agents arrived Agent Sculimbrene's home. The interview was brief and cordial; Agent Sculimbrene was cooperative and professional. The two agents declined to discuss other issues which Agent Sculimbrene tried to raise. They departed on cordial terms after Agent Sculimbrene gave them a tour of his house and discussed his planned retirement home. As it turned out, Agent Sculimbrene had no recollection of this particular interview of Mr. Nussbaum, and he did not have any notes.

Because I had been advised that the entire Livingstone file had previously been offered to the independent counsel and had been declined, and that they had raised no objection to the file being made available to the House Committee for use in its ongoing public hearings, I did not believe that these two questions to Agent Sculimbrene were within the scope of the independent counsel's inquiry. Neither was I aware at this time that Agent Sculimbrene's report contradicted any testimony given under oath by Mr. Nussbaum. Had I thought otherwise, I would not have informed the White House of the information regarding the interview of Mr. Nussbaum nor had anyone talk to Agent Sculimbrene.

In hindsight, my attempt at appearing non-partisan by keeping the White House and the House Committee equally informed obviously failed. My mistake led to an outcome I neither intended nor desired. However, I can assure this committee that the actions I have described were not done for any nefarious or partisan reason. My purpose here, as with the internal inquiry I conducted of the provision of confidential FBI file information to the White House, has been to be utterly fair and impartial, and to discharge my responsibilities without regard to political consequences.

Before closing, I want to briefly address two other questions that have arisen. The first is a July 25 telephone call I received from Jack Quinn and Kathleen Wallman at the White House counsel's office. They called to inform me that the White House would be sending a letter to Director Freeh relating to an upcoming speech on the House floor by Chairman Clinger. They asked me only two questions about the letter. First, they asked whether certain language in one sentence—referring to a "false" or "falsified" FBI report—would inadvertently offend the FBI. Second, they asked whether I thought that a letter to the Director should more appropriately come from Leon Panetta instead of Jack Quinn. While I answered those two questions, I did not comment on the remainder of the letter. I was not asked to edit the letter, nor did I offer to do so.

Finally, I want to explain why the FBI provided to the White House a copy of the manuscript of the book written by retired special Agent Gary Aldrich. The manuscript was replete with sensitive internal White House matters, including security issues, and there were indications that he was eager to publish the book immediately. The FBI, like other agencies that handle very sensitive information, has a pre-publication review process which requires the agency to closely scrutinize all proposed writings by current and former employees based upon information gathered in the course of the employee's work. All FBI employees agree to abide by this review process when they are hired and in hundreds of instances the system has worked as designed. Many employees and former employees have successfully published their works.

There was no way to ensure that Mr. Aldrich would not go ahead and publish the book before the FBI had completed its review process. Under those circumstances, and following internal discussions, it was agreed that the FBI should notify the White House that one of our former employees might imminently publish a book full of sensitive White House matters. In carrying out the pre-publication review itself, we did not involve the White House and we were careful to avoid any suggestion that we were engaging in political screening. Indeed, we never raised any objection to those portions of Mr. Aldrich's book which were the most politically sensational and which received the most attention from the media.

As it turned out, Mr. Aldrich published his book without FBI approval and without any advance notice to anyone at the FBI. By doing so, Mr. Aldrich intentionally breached the contract he signed when he became an FBI employee.

In addition to these contractual pre-publication review issues, Mr. Aldrich's manuscript raised independent policy concerns relating to the ability of the FBI to operate effectively. Virtually all of our operations, including background investigations, depend upon the cooperation of others. Very often, that cooperation rests upon our ability to maintain confidences. Consequently, when confidentiality is breached by one of our own employees, I believe that, as a general rule, we have an obligation to inform those who placed their trust in us, both as a matter of fundamental fair-

ness and a means of ensuring our ability to work effectively in the future. If an agent or other FBI employee detailed elsewhere in the executive branch or to a congressional committee announces his intention to publish a book revealing professional confidences and, especially, security matters, I believe the FBI should likewise inform the principals of that organization.

In conclusion, let me state again that both in my conduct of the internal inquiry into the provision of FBI file information to the White House, and in my actions in deciding to notify the White House's counsel's office, I acted according to what I believed was right and appropriate and utterly without regard to political calculations. My deepest regret is that some of my actions have raised questions about the independence of the FBI. The FBI under Director Freeh has been entirely free of political interference, from the White House and elsewhere. I fully share Director Freeh's commitment to keep it that way.

The CHAIRMAN. Thank you.

[Whereupon, at 12:17 p.m., the committee was adjourned.]

APPENDIX

QUESTIONS AND ANSWERS

JUNE 28, 1996

RESPONSES OF CRAIG LIVINGSTONE TO QUESTIONS FROM SENATOR BIDEN

Answer 1. Yes.

Answer 2-5. On the afternoon of Friday, June 7, 1996, Assistant Special Agent in Charge Arnold Cole stopped by my office at the White House. The previous day, June 6, 1996, I had learned for the first time that my Office, in performing the Update Project, had mistakenly requested copies of previous reports on several hundred individuals. I also learned that Anthony Marceca, who was principally responsible for the Update Project during the fall of 1993 and early 1994, had used a Secret Service list of supposedly current passholders as the source for the names of all the individuals whose previous reports were requested. I also knew that during the same time frame Mr. Marceca was performing the Update Project, the lists of current passholders provided to the Office of Personnel Security by the Secret Service routinely contained errors, *i.e.*, many individuals who, in fact no longer had access to the White House complex remained on the Secret Service lists of "current" passholders.

At the time Mr. Cole stopped by my office, these facts had already been made public. I had developed a close professional relationship with Mr. Cole over the three years during which we worked together on an almost daily basis. I therefore wanted Mr. Cole to know that we were not trying to blame the Secret Service for the mix up on the Update Project, and that I still did not know all the facts about what had happened. Although I do not recall precisely what Mr. Cole and I said to each other, I recall that Mr. Cole said something like "My office always gave you correct information," which I knew was not correct. In response, I said something like "The list was wrong for almost a year." Because I did not want to create a confrontation, and because I hoped to maintain a cordial working relationship with Mr. Cole and the Secret Service, I wished him well and ended the conversation. It seemed to me then (as it does now), that the mistake on the Update Project occurred because of a combination of errors in my Office, the Secret Service, and the FBI.

Answer 6. Within about three months after I started as Director of Personnel Security, I became aware that lists of supposedly active White House passholders routinely provided by the Secret Service to my office contained the names of individuals that no longer worked at the White House.

Answer 7. Yes. I brought this problem to the attention of Mr. Cole and his staff on many occasions throughout 1993. I also spoke with Patsy Thomasson on several occasions in 1993 about the errors in the Secret Service lists because I believed she could be of assistance in having the Secret Service correct the errors in its lists.

Answer 8. I believed that it was common knowledge in the Office of Personnel Security in the fall of 1993 that the Secret Service lists were not entirely accurate. I do not recall issuing any specific instructions to my staff regarding the use of these lists, other than encouraging my staff to notify the Secret Service of names that should be deleted from its lists when it was learned that an individual no longer had or needed to have access to the White House complex.

Answer 9. I have no recollection of ever having done so.

Answer 10. I have no recollection of ever having done so. Regrettably, I did not make the connection at the time between the task Mr. Marceca was performing and the poor quality of the Secret Service lists.

Answer. 11. I have no recollection of talking to Mr. Undercoffer specifically about Mr. Baker, but I do recall that in one of my initial conversations with Mr. Undercoffer in early 1994, I stressed to him how dependent the White House was on the lists of passholders provided by the Secret Service, and how the lists contained hundreds of errors, i.e., individuals listed as continuing to have access to the White House who did not, in fact, have access. Mr. Undercoffer responded that the Secret Service maintained two separate computer systems (the WAVES system and the E-PASS system) that listed passholders, and that he was making efforts to "marry" the two computer systems' information so the lists provided by the Secret Service to the White House would be more reliable. I also recall that at a later date, the Secret Service conducted some type of an internal review of its performance, during which I was interviewed by an agent from Secret Service Headquarters. As I recall, the only criticism I had of the Secret Service was that the lists of current passholders provided to my Office were not entirely accurate because there seemed to be a failure in communication between the Uniformed Division and the Technical Security Division of the Secret Service.

RESPONSES OF CRAIG LIVINGSTONE TO QUESTIONS FROM SENATOR HATCH

Regarding prior campaign activities and administration and campaign contacts

Answer 1. During the 1992 general election campaign, while I was working under the auspices of the Democratic National Committee ("DNC"), I participated in efforts to respond to political theater being staged by supporters of then-President George Bush. In particular, at events featuring then-candidate Bill Clinton, supporters of President Bush frequently appeared dressed in Elvis Presley or "Hippie" costumes. During that time, President Bush would not accept the invitation to debate Mr. Clinton. To call attention to this, and to respond with some political satire of our own, I worked with others in the DNC to identify events where President Bush would be appearing at which a person—never me—would appear in a "Chicken George" outfit to call attention to the fact that President Bush would not debate Mr. Clinton. At around the same time, I worked with others in the DNC to identify events where President Bush would be appearing at which a person—never me—would appear in a "Pinocchio" outfit.

On occasion during the fall of 1992, I also helped educate persons who supported Mr. Clinton how to peacefully and legally make their views known at events where President Bush was appearing.

Answer 2. I have never been engaged in what I understand some to have referred to as "opposition research." I do not recall being involved in opposition events or activities similar to those addressed in the previous question in campaigns other than the 1992 general election campaign.

Answer 3. I became acquainted with Mr. Stephanopoulos during the 1992 general election campaign. Mr. Stephanopoulos was senior advisor to the campaign, and I was working as an advance person. I have never had a close relationship with Mr. Stephanopoulos. I know he knows who I am; we exchanged greeting when we passed each other in a hallway; I have attended a few meeting where he, among others, was also present.

At the suggestion of Mr. Stephanopoulos's secretary, I wrote a note to Mr. Stephanopoulos seeking his assistance in occurring a position in the Military Office while I was Director of Personnel Security. I asked the secretary if Mr. Stephanopoulos could provide me a recommendation. The secretary suggested that I write a note to him. I wrote the note, and that was the last I heard of it. To my knowledge, Mr. Stephanopoulos did not provide any assistance to me. I did not get the job.

Answer 4. Sometime in 1993, I asked Harry Thomasson for assistance in obtaining a position in the Military Office. I had met Mr. Thomasson while working on the inaugural. I do not recall specifically what Mr. Thomasson said to me or did in response to my request, but I have a vague recollection that sometime later he told me that the Administration preferred to have a career military officer in the position.

Answer 5. I asked Mr. Segal to sponsor me for employment at the Clinton White House but I do not know whether he did so. I knew Mr. Segal from my work as an advance person on the Gary Hart and Bill Clinton Presidential campaigns, in which Mr. Segal had also been involved. To the best of my recollection, I never reported directly to Mr. Segal in either campaign.

Answer 6. Yes. I worked for the Clinton/Gore campaign in October and November of 1992. I do not know if I had a formal title, but the job I had is typically described as site advance. I reported to whoever was assigned to be the team leader for an

event on which I was assigned to work. The team leaders were different for different events. I recall that one of my supervisors was Mike Jones.

Regarding hiring and early duties in the White House

Answer 1. After Mr. Clinton was elected President, I worked on the inaugural committee as Director of Security. In that position, I had the opportunity to work closely with the Secret Service, especially the Presidential Protective Division, and numerous other law enforcement agencies. Like many other people who worked on the campaign and the inaugural, I was interested in a position in the administration. In late December 1992 or early January 1993, I believe I approached Ms. Christine Varney and Mr. Eli Segal, and possibly other campaign officials (I do not specifically recall who, if anyone, I may have approached other than Ms. Varney and Mr. Segal) about the possibility of working in the White House or elsewhere in the Administration.

Sometime in late January or early February, I learned of a position in the White House Security Office (as it was then called). I believe I met very briefly—i.e., less than on minute with Bernard Nussbaum, and then with Cheryl Mills, who is an attorney in the Counsel's Office.

Ms. Mills spoke with me about the job, which she described as largely administrative. She also told me that she would not be my supervisor, since the Security Office would not be within her responsibilities. She suggested that I fill out the appropriate paperwork (e.g., SF-86) so that when the person in the Counsel's Office who would oversee the Security Office was determined, I would have my paperwork done. Over the next few days, I asked various people from the campaign if they would "put a word in" for me with the Counsel's Office. I recall asking Ms. Varney and Mr. Segal to support me.

Mr. Kennedy, the attorney in the Counsel's Office who ultimately was given responsibility for the Office, then called me in for what I believed to a preliminary interview. He said that people I had worked with—he did not say who—had spoken highly of me and that I could begin working in the Office on an interim or probationary basis until the completion of my FBI background investigation.

Approximately one month later, Mr. Kennedy reviewed my background investigation with me and we had a discussion regarding my suitability for the position of Director of the Office of Personnel Security. Mr. Kennedy described the meeting as a "Come to Jesus" session where he and I discussed all issues relating to my suitability. At the end of the meeting, Mr. Kennedy told me that he would discuss my suitability with FBI Special Agents Dennis Sculimbrene and Gary Aldrich to be certain they were comfortable with me. Mr. Kennedy had made it clear to me that my employment was conditional upon what Agents Sculimbrene and Aldrich had to say. I clearly recall Mr. Kennedy, as well as Agents Sculimbrene and Aldrich, telling me later that they both told Mr. Kennedy that they had no difficulty working with me.

It was my understanding that after Mr. Kennedy reviewed my background and spoke with Agents Sculimbrene and Aldrich, I was hired on a permanent basis. I do not know who else, if anyone, Mr. Kennedy spoke with regarding my employment; he did not tell me, and I never had any reason to ask.

As to the specific questions, I completed my SF-86 on or about February 17, 1983. I submitted my completed SF-86 at the same time. I believe the FBI completed my background investigation in March 1993. I believe Mr. Kennedy granted my initial security clearance. I held a temporary White House pass prior to receiving a security clearance. I held a temporary pass until September or October 1993, but Mr. Kennedy informed me I had a security clearance long before I received a permanent White House pass. I was granted a permanent White House pass in September or October 1993. I believe I was issued interim clearances prior to receiving my permanent pass, but I do not have access to my records to confirm this.

Answer 2. It was my understanding that when Mr. Kennedy told me that he had reviewed by background investigation and had spoken with Agents Sculimbrene and Aldrich, that I was appropriately cleared to engage in the duties of my position as Director of Personnel Security. That was approximately mid March 1993. Prior to that time, I was working in the Office of Personnel Security and learning my job from Jane Dannehauer, the former Director of the office, and Nancy Gemmel, Ms. Dannehauer's assistant. During the approximately one month period from when I first started working the Office until my background investigation was complete, I supervised, the Office with two full-time and one part-time staff assistants. The Office at the time was focusing on distributing paperwork (e.g., SF-86s and Tax Check Waiver forms) to new employees in the White House to begin the process of determining suitability for access to the White House complex. We reviewed paperwork for completeness prior to forwarding it the appropriate agencies (e.g., FBI or IRS) for processing. Upon receipt of completed background investigations from Counsel's

Office (which received them directly from the FBI), we would, when appropriate, forward paperwork to the Secret Service for the final step in the process of issuing a permanent pass. I do not have a specific recollection of how far into this process we got with anyone prior to my receiving my initial clearance in March 1993. During the same period, a significant portion of my time was spent responding to requests from Management and Administration to clear staff, volunteers and interns into the White House complex on a daily basis.

In the period from the beginning of the Administration at the end of January 1993 through mid-March 1993, I recall assisting in advance on one trip—the President's first meeting with his new Cabinet at Camp David. As I recall it, this trip occurred during the first week of the new Administration. At that time, I was not yet working in the Office of Personnel Security.

Regarding State Department records search

Answer 1. To the best of my knowledge, I have never met Joseph E. Tarver. I certainly do not remember ever meeting him. Because I have no recollection of ever meeting Mr. Tarver, I have no way of knowing whether we ever worked on the same political campaigns.

Answer 2. To the best of my knowledge, I have never spoken with Mr. Tarver about anything.

Answer 3. To the best of my knowledge and recollection, I have never spoken with Mr. Tarver about anything, which would include our "respective access to information on former administration officials." As a result, to the best of my knowledge, I could not have spoken about our "respective access to information on former administration officials" with anyone else.

In the course of my official duties as Director of Personnel Security, I spoke with people in the White House Counsel's Office and possibly the FBI regarding former administration officials who were being processed for access to the White House complex because they needed access for service on Presidential Commissioner, Boards, or for other official purposes. The one former administration official who I recall discussing is an attorney who is handling legal issues relating to former President Bush's Presidential Library.

Answer 4. To the best of my knowledge and recollection, I do not believe that I ever did so.

Answer 5. I do not recall being aware of the article at or around the time it was published. I have a vague recollection of learning about the article later, perhaps in the context of hearing that the Justice Department had declined to prosecute the individuals involved, but I am not certain when that was.

Answer 6. I do not believe I have ever spoken to Mr. Tarver, or about him to anyone else. Aside from responding to questions posed in the context of the current Congressional investigations, my only recollection of ever discussing the issue of a search of Bush State Department files with anyone is that I believe I made a comment at one point to my staff that the incident involving the State Department files should be a reminder to us that the files we maintained needed to be safeguarded from inappropriate inspection.

Answer 7. To the best of my knowledge and recollection, I do not believe I have ever spoken to Mr. Tarver, or about him to anyone else.

Answer 8. To the best of my recollection and belief, the answer is no.

Answer 9. I do not know whether I have ever met Ms. Bond or Mr. Schulhof, although their names sound familiar to me, perhaps as persons involved in the Clinton/Gore campaign or in the inaugural. Mr. Kahn's name does not sound familiar to me.

As to the specific questions, because I do not know whether I know any of the three individuals, I do not know whether I worked on any of the same campaigns with them. I have no knowledge that any of the three individuals were involved in the Clinton State Department review of Bush administration files. To the best of my recollection and belief, I have never had any such discussions.

Answer 10. Other than my prior responses, I have no recollection of discussion either Mr. Tarver, or the search of Bush State Department files with any members of the Office of Personnel Security or anyone else. This would include Mr. Nussbaum, Mr. Foster, Mr. Stephanopoulos, Mr. Lindsey, the President, and the First Lady.

Regarding Mr. Marceca

Answer 1. Although Mr. Marceca indicated to me during the time he was detailed to my Office that he was interested in other opportunities in the Administration, I do not recall when I learned he had applied for a presidential appointment. However, I believe I learned of his interest in an Inspector General position during his

detail to the Office of Personnel Security, I have no recollection of his interest in a position as a United States Marshal. My assistance to Mr. Marceca with regard to his interest in serving elsewhere in the Administration consisted of referring him to someone (I do not recall who) in Presidential Personnel, with whom I believe Mr. Marceca met. I do not recall offering any assistance beyond requesting that Presidential Personnel consider scheduling an appointment for him.

Answer 2. I believe Mr. Marceca's background investigation was being done because of his detail to the White House, not "in reference to his desired appointment as a United States Marshall of Inspection General." It was standard practice at the time (and may still be) for every person who has routine access to the White House to have a background investigation done, regardless of whether they had already had an investigation for another reason.

I believe that I informed Mr. Marceca, in general terms, of problems in his background investigation sometime in late 1993 or early 1994. Because background investigations occasionally contain inaccurate, misleading or false information, it was standard operating procedure to followup with the subject of a background investigation where derogatory information was included to determine whether an error had been made.

As to the specific questions, sometime in late 1993 or early 1994, Mr. Kennedy informed me that there were unresolved issues in Mr. Marceca's background investigation. Counsel's Office always received background investigation summaries directly from the FBI and reviewed them before transmission to my Office.

Prior to receiving the summary of Mr. Marceca's background investigation, and shortly before my conversation with Mr. Kennedy, I received a call from someone in the FBI (I do not recall who, but I am confident it was someone working in Jim Burke's office) that the FBI was sending over a partial background investigation summary report on Mr. Marceca that contained some unresolved issues. This type of "heads-up" call was routine when the FBI was sending over a background investigation summary that raised suitability concerns.

I do not recall ever discussing with anyone in the White House Counsel's office Mr. Marceca's interest in obtaining a presidential appointment as a United States Marshall or Inspector General.

After learning of the issues developed during the FBI's background investigation of Mr. Marceca, Mr. Kennedy told me that Mr. Marceca's detail would not be extended. Mr. Marceca's detail was not "rescind[ed]," but I believe his supervisor at Army C.I.D. was notified that Mr. Marceca's detail would not be extended (as had been contemplated).

Answer 3. I recall that Mr. Marceca expressed an interest in seeing his background investigation summary in late 1993 or early 1994. I told him—like I told other people who made similar requests—that he would need to file a FOIA request. I may have referred him to George Saunders for information on how to file a FOIA request, as was my standard practice. I have a vague recollection of hearing that Mr. Marceca had filed a FOIA request.

Answer 4. I do not know whether Mr. Marceca continued to have pass access to the White House after his detail ended. I believe Mr. Marceca worked as a volunteer on the "comments" line in the Correspondence Office. I do not recall any conversations with anyone at the White House or Secret Service regarding any need for Mr. Marceca to have continued access to the White House after his detail ended in February 1994. It was not my responsibility as Director of Personnel Security to require anyone to tender his or her White House pass at the end of his or her employment with, or detail to, the White House.

Mr. Marceca met with me at my Office on several occasions after his detail ended, but I do not have any recollections of specifically when he did so. I do not have any specific recollection of a meeting in September 1994 with Mr. Marceca in my Office, nor do the details of the meeting with Mr. Marceca describes in his dispositions and restated in subsection (vi) of subpart (g) of this question sound familiar to me. I have absolutely no recollection of Mr. Marceca ever suggesting to me that I have his FBI background investigation summary report on my desk prior to any meeting with him. The only reason I would have had Mr. Marceca's background investigation summary on my desk prior to a meeting with him would be to discuss with him, in general terms, issues that had come up in his background investigation, as described above in response to Question 2 on page 14.

Answer 5. To the best of my knowledge, the FBI forwarded a partial background investigation summary report on Mr. Marceca to the White House in late 1993 or early 1994 as part of its routine procedure of providing the White House with background investigation summaries requested by the White House. I believe a final background summary report was forwarded to the White House later in the spring of 1994, but I am not certain of the date. As I noted above, Mr. Kennedy mentioned

to me in late 1993 or early 1994 that he had concerns regarding Mr. Marceca's background investigation.

Regarding responsibilities in the White House Office of Personnel Security

Answer 1. As part of my official job duties I reviewed SF-86 forms. On occasion, these forms would contain an applicant's acknowledgement of (a) prior illegal drug use, (b) alcohol or prescription drug abuse, or (c) treatment received by mental health professionals.

Answer 2. I directed my paid staff (i.e., not interns or volunteers) in the Office of Personnel Security to review SF-86 forms. On occasion, these forms would contain an applicant's acknowledgement of (a) prior illegal drug use, (b) alcohol or prescription drug abuse, or (c) treatment received by mental health professionals.

Answer 3. As part of my official job duties I reviewed FBI background investigation summary reports on Clinton Administration personnel. On occasion, these summary reports would contain an applicant's acknowledgement of (a) prior illegal drug use, (b) alcohol or prescription drug abuse, or (c) treatment received by mental health professionals.

Answer 4. I directed my paid staff (i.e., not interns or volunteers) in the Office of Personnel Security to review background investigation summary reports on Clinton Administration personnel. On occasion, these summary reports would contain an applicant's acknowledgement of (a) prior illegal drug use, (b) alcohol or prescription drug abuse, or (c) treatment received by mental health professionals.

Answer 5. Although I may have reviewed one or more improperly requested and received FBI background files of previous Administration employees, which files may, on occasion, have contained an acknowledgment of (a) prior illegal drug use, (b) alcohol or prescription drug abuse, or (c) treatment received by mental health professionals, I would have done so only because I believed at the time I reviewed the file that the file was properly requested and received. I never reviewed any "improperly requested and received" FBI background file of previous Administration employee" with any knowledge that the file I was reviewing was improperly requested and received.

Answer 6. To the best of my knowledge and recollection, I do not believe I ever did so.

Answer 7. As part of the routine pre-employment screening process, the Office of Personnel Security performs a preliminary screening interview of prospective personnel to determine, among other things, whether the prospective employee has a history of prior illegal drug use, alcohol or prescription drug abuse, or treatment by mental health professionals such that it would not be appropriate for the White House to continue considering the individual for employment. These interviews were routinely conducted by myself and Mr. George Saunders during the three years that I was Director of the Office. On occasion, an individual would acknowledge prior illegal drug use, alcohol or prescription drug abuse, or treatment by mental health professionals during such an interview.

RESPONSES OF JEFFREY UNDERCOFFER TO QUESTIONS FROM SENATOR HATCH

Question 1. Please explain in writing why the inactive pass holders of the initial 400 or so individuals who had their FBI background files improperly requested and received by the White House could not have appeared as active pass holders on lists generated by the Secret Service databases.

Answer 1. Reference is made to my report to the United States Senate, Committee on the Judiciary, titled "Analysis of EPASS and WAVES re: List of 476 Names", dated July 15, 1996. In this report I give the following salient points as to why the U.S. Secret Service never generated a list or printout showing all of these 476 individuals as active passholders at the White House complex:

a. In January, 1989 when the EPASS system was implemented the records of all current and previous passholders were electronically transmitted to the EPASS computer. Subsequently, new passes were issued to current passholders. There was no action taken regarding those who were previous passholders. Of the 476 subject individuals 94 of them were never issued a pass by the EPASS system.

b. The White House Division is in possession of a WAVES generated printout listing inactive passholders as of August 7, 1991. Accordingly, 182 of the 476 subject individuals as listed as inactive passholders on this printout.

c. According to both EPASS and WAVES records 286 of the 476 subject individuals were inactive passholders as of January 20, 1993.

d. The White House Division is in possession of a WAVES generated printout dated 5/2/93, listing all active passholders employed by White House Operation Per-

sonnel. Accordingly, this printout shows: 94 of the 476 are correctly listed as active passholders; 8 individuals were incorrectly listed as active; 3 individuals are employees of the residence (consequently they would not be listed on a printout of White House Operations Personnel); 3 individuals were not hired until after 5/2/93, and 368 of the 476 subject individuals are absent from this printout of active passholders.

e. The White House Division is in possession of a WAVES generated printout dated 7/8/93, listing all active passholders employed by White House Operations Personnel. Accordingly, this printout show: 85 of the 476 are correctly listed as active passholders; 8 individuals were incorrectly listed as active; 3 individuals are employees of the residence (consequently would not be listed on a printout of White House Operations Personnel); 1 individual was not hired until after 7/8/93; and 379 of the 476 subject individuals are absent from this printout of active passholders.

Question 2. Please provide any documents you believe relevant to explain the Secret Service database.

Answer 2. The following WAVES printouts have previously been submitted to your committee: all inactive passholders as of 08/07/91; status change from active to inactive during January, 1993; status change from active to inactive during February, 1993; active passholders employed by White House Operations Personnel as of May 2, 1993; status change from active to inactive during May, 1993; status change from active to inactive during June, 1993; and active passholders employed by White House Operations Personnel as of July 8, 1993.

Additionally, the following reports are being submitted with this response:

Addendum A—a listing of the 476 individuals sorted by EPASS inactive date. The WAVES inactive date is included so a comparison may be made between the EPASS inactive date and the WAVES inactive date;

Addendum B—a listing of 408 individuals of 476 who were inactive on both the WAVES and EPASS systems on December 1, 1993;

Addendum C—a listing of 286 individuals of the 476 who were inactive on both the WAVES and EPASS systems on January 20, 1993;

Addendum D—a list of 55 individuals of the 476 who were active on the WAVES and EPASS systems on December 1, 1993, and were working at the White House;

Addendum E—a list of 10 individuals of the 476 who were inactive on EPASS but active on WAVES on December 1, 1993.

RESPONSES OF JEFFREY UNDERCOFFER TO QUESTIONS FROM SENATOR BIDEN

Question 1. When did the Secret Service first learn that persons who had been made "inactive" on the E-PASS system were recorded as "active" on the WAVES system?

Answer 1. The Secret Service first learned that persons who were listed as "inactive" on the EPASS system were listed as "active" on the WAVES system in February, 1994.

Question 2. How did the Secret Service learn this was occurring?

Answer 2. The Secret Service learned this was occurring when Craig Livingstone informed Special Agent Jeff Undercoffer that James A. Baker was listed as an active passholder on a WAVES printout.

Question 3. What steps did the Secret Service take to remedy this problem?

Answer 3. Special Agent Jeff Undercoffer directed Dr. John R. Tole, ScD, to conduct an analysis on the EPASS system, to include its connectivity of the WAVES system, in order to ascertain how the aforementioned situation could have occurred.

Question 4. Did the Secret Service hire a contractor to address this problem? When was the contractor hired? If the contractor is on a permanent or long term retainer, when was the contractor specifically instructed to address this problem?

Answer 4. The contractor, Dr. John R. Tole, ScD, who is on a long term retainer, was instructed to address this problem in February, 1994.

Question 5. Did the contractor report the cause of this problem to the Secret Service? Please provide to the Committee any written communication between the contractor and the concerning communication problems between the WAVES and E-Pass systems.

Answer 5. Yes. Neither the contractor nor the Secret Service documented the events concerning this communication problem.

Question 6. What actions did the contractor take to remedy the problem? When did this occur?

Answer 6. The contractor, after a lengthy analysis, discovered a software "bug" in the communications program linking the EPASS system to the WAVES system. This software "bug" was remedied. To further prevent a loss of data from the data

buffer, the queuing capability of the system was improved and the data buffer in the communications hub between the two systems was made more robust; that is, its capacity was increased. This occurred in April, 1994.

Question 7. Did any employee of the Secret Service change the status of individuals listed in the WAVES from "active" to "inactive" to make this information consistent with the E-PASS system?

Answer 7. Yes.

Question 8. List the names of the individuals who performed this task.

Answer 8. Special Agent Jeff Undercoffer, and Personnel Security Specialists Margaret Stanley and Janet Friedline.

Question 9. How many persons needed to have their status changed on the WAVES system to conform the information to E-PASS?

Answer 9. Approximately 20.

Question 10. For each person whose status was changed on the WAVES system, please provide the following information: a. The date the person became "inactive" according to E-PASS; b. The date the Secret Service learned that the person was listed as "inactive" on E-PASS but "active" on WAVES; c. The name of the individual that changed the person's status on WAVES to make the information consistent with E-PASS; d. The date that the data in the WAVES system was changed

Answer 10.

Name	E-PASS date	WAVES date
Baker, James Addison	8-26-93	7-7-94.
Bateman, Paul William	1-15-93	2-9-94.
Bizic, Danica	1-15-93	7-12-94.
Briscuso, Raymond Joseph, Jr	11-1-93	7-20-94.
Brown, Ronald James	1-15-93	8-14-94.
Burns, Francine Maria	11-1-93	3-16-94.
Butterfield, William Joseph	1-15-93	7-12-94.
Campbell, Victoria Sima	1-15-93	8-24-94.
Carpendale, Andrew Michael	1-15-93	7-15-94.
Blumenthal, Gary Robert	1-15-93	8-4-94.

SA Jeff Undercoffer, and PSS's Janet Friedline and Margaret Stanley made the changes to the WAVES system, however, we are not able to say exactly which records were changed by whom, nor exactly when this was done. Because of the dynamic nature of the WAVES "STATUS DATE" (please see my report provided to the Senate, dated 7/15/96, page 2, item 1 "Action by System") I cannot say with absolute certainty that the change in WAVES did not happen earlier than the WAVES date listed above. However, it certainly happened by that date.

Question 11. At anytime since the system has been in operation, did the Secret Service compare the entire list of "active" passholders on the E-PASS system to the entire list of "active" passholders on the WAVES system to ensure that the data was the same on each system. If so, for each such event, describe the process that was used to make this comparison and list the errors, if any, that were found.

Answer 11. On August 22, 23, and 24, 1994, Dr. John R. Tole, ScD, and Stewart Rabinowitz synchronized the E-PASS and WAVES databases. During this process the records were compared to each other, duplicate records were deleted, and inaccuracies were corrected. There were no reports made of any errors that may have been found.

Furthermore, in July 1996, the databases in WAVES and E-PASS were compared to each other to check for consistency and accuracy. Of the more than 24,000 active and inactive passholder records in each database three anomalies were found. These three anomalies were all of the same nature, that is, each of the passholders changed their name and the WAVES system created an additional record for each of these individuals. This resulted in each of these three individuals having one record in the E-PASS system with their new name and two records in the WAVES system, one record with the new name and one with the old name. The final result of this comparison shows that the status of all 24,333 active and inactive passholders is correctly and accurately listed by both the WAVES and E-PASS systems.

Question 12. You testified that an overflow of the "ethernet hub" between the WAVES and E-PASS system resulted in the WAVES system failing to record the inactivation of up to 20 individuals in the E-PASS system. Did these "overflows" happen simultaneously or on a number of separate occasions? How many overflows

occurred? When did they occur? How many names were "lost" during each of these "overflows"?

Answer 12. These "overflows" happened on different occasions. By reviewing the 10 specific occurrences in my response to question #10 I am able to state that these "overflows" occurred at least 7 times on 1/15/93, twice on 11/1/93, and once on 8/26/93.

Question 13. You testified that after the Clinton Administration's requests for FBI files on former employees became public, the Secret Service conducted an "audit" of its computer system. Who performed the audit? Please describe what took place during this audit, when it began, the exact scope of the audit, the exact "lists" used to conduct the audit and the results of the audit thus far. Please provide the committee a copy of all documents relating to the audit.

Answer 13. Please find attached a copy of my report titled "ANALYSIS of E-PASS and WAVES re: List of 476 Names", dated 07/15/96. Additionally, a report listing the 476 names ordered by E-PASS inactivation date is attached as Addendum A. This addendum shows both the E-PASS inactivation date and the WAVES inactivation date so that a comparison between the two may be made.

Question 14. Please provide to the Committee a report indicating which of the 477 persons on the FBI report were:

- a. Inactive on both the WAVES and E-PASS system on December 1, 1993.
- b. Inactive on both the WAVES and E-PASS system on January 20, 1993.
- c. Active on both the WAVES and E-PASS on December 1, 1993 but no longer working at the White House.
- d. Active on both the WAVES and E-PASS system on December 1, 1993 and were working at the White House; and
- e. Inactive on E-PASS but active on WAVES on December 1, 1993.

Answer 14. Find the following reports attached:

Addendum B—a listing of 408 individuals of the 476 who were inactive on both the WAVES and E-PASS systems on December 1, 1993.

Addendum C—a listing of 286 individuals of the 476 who were inactive on both the WAVES and E-PASS systems on January 20, 1993.

Addendum D—a list of 55 individuals of the 476 who were inactive on the WAVES and E-PASS systems on December 1, 1993, and were working at the White House.

Addendum E—a list of 10 individuals of the 476 who were inactive on E-PASS but active on WAVES on December 1, 1993.

We have no way of knowing of any individual who was active on both the WAVES and E-PASS system on December 1, 1993, but no longer working at the White House.

Question 15. You testified about the status of individuals on the FBI's list of 477 names as of January 20, 1993. Did you check the status of these persons as of January 20, 1993, on both the E-PASS and WAVES systems? How were these comparisons made?

Answer 15. Yes. The status of 286 individuals was checked in both the E-PASS and WAVES system. The comparisons were made by comparing the E-PASS date to the WAVES date. The WAVES date was used as the measure for this purpose because, if there is a difference between the two dates, the WAVES date will be the later of the two.

Question 16. Did Mary Beck or any other Clinton Administration employees ever provide the Secret Service with a list of persons who were listed as active passholders by the Secret Service, but no longer worked at the White House? When were such list provided to the Secret Service? How many names were on these lists?

Answer 16. In the Spring of 1994, a meeting was held between representatives of the Executive Office of the President and representatives of the Secret Service. The representatives of the Executive Office of the President included Mary Beck from the Personnel Management Division, and Chuck Easley and Craig Livingstone from the Office of Personnel Security. The representatives of the Secret Service included Margaret Stanley, Janet Friedline, and Jeff Undercoffer from the White House Division. At this meeting the Secret Service was requested to deactivate White House complex passes based upon:

- a. The request of the Office of Personnel Security;
- b. When a passholder turned in their pass and stated they were "checking out" and no longer had need for the pass; or
- c. Separation information supplied by the Executive Office of the President Personnel Management Division.

This information provided by the Personnel Management Division was to be in the form of computer printouts and listed new hires or "accessions" and separations.

The Secret Service was requested to comply with this new procedure as a departure from the previous procedure which consisted of:

- a. The request of the Office of Personnel Security; or
- b. When a passholder turned in their pass and stated they were "checking out" and no longer had need for the pass; or

This departure from the previously established procedure quickly caused confusion for both the Secret Service and the Administration. When the Secret Service deactivated the passes based upon the information provided by the Personnel Management Division it was realized that many individuals were not leaving the White House but rather changing positions from one agency to another within the White House complex and continued to need access into the White House complex. This new procedure generated several complaints from the staff, when, as a result of their passes having been de-activated, they could no longer gain access to the complex. Shortly thereafter the Office of Personnel Security instructed the Secret Service that they would be the sole point of contact for both pass requests and pass de-activations, and we should not take any action based upon the information we receive from the Office of Personnel Management. It should be noted that the Personnel Management Division continues to send us printouts listing both accessions and separations, however, at the direction of the Office of Personnel Security, we continue to take no action regarding this information.

Question 17. Did the Secret Service attempt to confirm whether individuals on this list still worked at the White House? If so, how many of these individuals were found to be "active" on the Secret Service database but no longer were working at the White House? How many were included in the Secret Service list of active passholders but were actually listed as "active" on the E-PASS system.

Answer 17. As previously stated, the needs of the Office of Personnel Security and the Personnel Management Division differ significantly as they relate to the Secret Service regarding pass and access requirements at the White House complex. In early 1994 the Secret Service attempted to accommodate the Personnel Management Division's request and de-activated dozens of passholders only to reactivate them at the request of the Office of Personnel Security. To prevent a reoccurrence of this type of situation the Secret Service was directed to take no action regarding any list or document received from the Personnel Management Division. Consequently, we have not documented any material received from Mary Beck or the Office of Personnel Management.

Question 18. Has the Secret Service worked with Mary Beck or others on the Office of Administration's database project to reduce the number of persons on the Secret Service's "active" list that no longer work at the White House? What steps have been taken to improve the list?

Answer 18. The Secret Service has not knowingly worked with Mary Beck regarding the Office of Administration's database project.

Question 19. During your meetings with employees from the Office of Administration working on the database project, did you or other Secret Service officials state that individuals whose passes have been inactivated will appear as "active" on computer generated lists because "the two computers haven't communicated yet"? Did anyone from the Secret Service state at these meetings that "sometimes it takes weeks" for the systems to communicate?

Answer 19. Representatives of the U.S. Secret Service only attended one meeting with representatives of the Personnel Management Division regarding the topic of WAVES and E-PASS records. This meeting was held in the Spring of 1994. The stated purpose of the meeting, as we were told, was to address a request to provide copies of our records in a DOS compatible format instead of the EBCDIC format tape which was currently being provided on a weekly basis. Representatives of the Personnel Management Division stated that they used our passholder information to reconcile their pay and personnel records. At this one and only meeting the Secret Service presented several reasons as to why our records should not be used to reconcile Office of Administration pay and personnel records. One of those reasons was because if a change in passholder status occurs near the end of the month it takes a period of time, perhaps as long as a week or two, for the E-PASS system to update the WAVES system. For a detailed explanation of this delay please see my report titled "Analysis of E-PASS and WAVES re: List of 476 Names" dated 7/15/96, page 2 paragraph 4.

Question 20. During these meetings did your or other Secret Service officials state that the Secret Service was working on a "new access control system" to create and "instantaneous change in WAVES"? Regardless of whether this statement was made during 1993 or 1994 was the Secret Service trying to develop a new access control

system? If so, why? What improvements did the Secret Service want the new system to contain?

Answer 20. Again, there was only one meeting which was held in the Spring of 1994. At that meeting I stated that our present systems (WAVES, E-PASS, and ACCESS) were not originally designed to accommodate the increased requirements that were currently being placed on it by the current administration. I made the following points regarding our "system":

The WAVES system was designed and implemented in 1984, E-PASS and ACCESS were designed and implemented in 1989. They were not originally designed to interact with each other, however an interface between the two systems, which further enhanced their operation, was developed, implemented, and has been fully functional.

Realizing the increased requirements being placed on our "system" a feasibility study was conducted in February, 1993. The results of this feasibility study was the replacement of the computer on which the WAVES system resided with a new Tandem Himalaya series mainframe computer.

In early 1994, in order to further facilitate pass and appointment requests, the Secret Service designed, developed, and implemented a Graphical User Interface between the WAVES systems, the Secret Service mainframe computer, and the National Crime and Information Center (NCIC) system.

A new Access Control system was in the conceptual phase of development. This new system was to incorporate the functionality of the WAVES, E-PASS, and ACCESS systems into one integrated system and was going to be designed to work together utilizing a top down development lifecycle.

The new Access Control system is to incorporate the functionality of the WAVES, E-PASS, and ACCESS systems into one fully integrated system. The new system will increase the passholder base to contain 40,000 active passes and be able to process 4,000 appointments per day.

Question 21. At any time during 1993, has the Secret Service sought to obtain funds to improve the communications between the E-PASS and WAVES systems? Have funds been sought to link this system to other computers?

Answer 21. There were no funds sought to improve communications in 1993.

Neither the E-PASS nor WAVES computers are linked to any non Secret Service computers. In 1990 or 1991, the Secret Service spent approximately \$1,000 to connect the WAVES computer to the Secret Service mainframe at 1800 "G" Street, NW.

Question 22. When did the Secret Service learn that it possessed a list of active passholders from July, 1993? From where was this list obtained? Does the Secret Service possess other lists of passholders generated between January 20, 1993 and March 1, 1994? If so, please identify the date of such lists and provide copies to the committee.

Answer 22. The active passholder list dated July 1993, is one of several printouts used for the pass reissue project in 1993. I discovered these printouts concerning the 1993 pass reissue project as well as other historical WAVES printouts in July 1996. These printouts were located in our files in Room 23, Old Executive Office Building.

The following WAVES printouts have already been provided to your committee: All inactive passholders as of 08/07/91; status change from active to inactive during January 1993; status change from active to inactive during February 1993; active passholders employed by White House Operations Personnel as of May 2, 1993; status change from active to inactive during May 1993; status change from active to inactive during June 1993, and active passholders employed by White House Operations Personnel as of July 8, 1993.

We have several other printouts generated between January 20, 1993 and March 1, 1994, amounting to hundreds of pages, and not germane to the 476 subject individuals. If you require more than those printouts already submitted, we will provide you with copies of those other printouts in our files.

RESPONSES OF MARY BECK TO QUESTIONS FROM SENATOR HATCH

Question 1. As Associate Director for Human Resources Management at the Office of Administration at the Executive Office of the President, does your office maintain records of all employees who are detailed to the White House?

Answer 1. Yes, the Human Resources Management Division maintains records of all employees who are detailed to the White House.

Question 2. Does your office have records which reflect that date on which Mr. Marceca was detailed to the White House Office of Personnel Security? If so, please provide these dates.

Answer 2. Yes, the Human Resources Management Division has records that reflect the date on which Mr. Marceca was detailed to the White House Office of Personnel Security.

Question a. What was the original term of Mr. Marceca's detail?

Answer a. Original detail 8/18/93-2/19/94.

Question b. Was his detail completed?

Answer b. Detail was completed according to our records.

Question c. To your knowledge, was there any attempt to extend his detail, or seek a second detail? If so, please explain.

Answer c. The Human Resources Management Division received paperwork to track a subsequent detail for Mr. Marceca from 3/2/94-7/1/94. That detail was put in the system, but then deactivated effective 3/3/94.

Question 3. Mr. Marceca has indicated his detail ended at the White House Office of Personnel Security in February 1994. Does your office maintain records which would indicate whether or not Mr. Marceca was ever listed as a White House volunteer either before or after his detail ended? Provide the dates he was made a volunteer, and the office(s) to which he was assigned.

Answer 3. The Human Resources Management Division does not have records on individuals who volunteer through the White House Volunteer Office.

RESPONSES OF MARY BECK TO QUESTIONS FROM SENATOR BIDEN

Question 1. You testified that when you compared the Secret Service database to payroll records, you found that hundreds of names on the Secret Service list no longer worked at the White House. When did you make this comparison? How many "disconnects" did you find at that time? Did you provide the Secret Service with a list of these "disconnects"? Please provide a chart showing the number of "disconnects" per month from 1994 to the present.

Answer 1. In the early database comparisons with Secret Service Files there were over 300 disconnects. These comparisons would have been made in late 1993 and early 1994. The Executive Office of the President ("EOP") Security Office worked directly with the Access Control Branch to deactivate passes on departed employees, and we also discussed the problem with officials of the Secret Service. I provided lists of the disconnects to the Security Offices for forwarding to and discussion with the Secret Service.

My lists were refreshed weekly and the old working lists were destroyed. Consequently, I do not possess records that identify the number of disconnects for every month since December 1994. The EOP Security Office did retain some copies of the disconnect lists.

See Attachment A—Monthly Chart: "Disconnects"

Question 2. When you met with representatives of the Secret Service in 1994, did they express how many of the "disconnects" could be attributed to a mechanical failure in the WAVES and E-PASS systems? Was a determination even made as to how many of the "disconnects" were attributable to mechanical failures and how many to other causes?

Answer 2. As I stated in my opening remarks to the Judiciary Committee on June 28, 1996, when we met with the Secret Service in 1994, they generally attributed the problem to a breakdown between the E-PASS and WAVES systems; the Secret Service did not, however, specifically identify how many "disconnects" were attributable to mechanical failure. I was not aware that any determination had been made regarding the number of disconnects attributable to mechanical failure until the June 28, 1996, hearing.

Question 3. Have you worked with the Secret Service since 1994 to improve the accuracy of the Secret Service list of active passholders? What process has been used to improve the Secret Service list? Have you determined why individuals that are no longer working at the White House have been listed on the Secret Service's roster of active passholders?

Answer 3. I have provided listings of disconnects to the Security Offices for forwarding to and discussion with the Secret Service. Staff accessions and separations listings are now being provided to the Secret Service by the Security Office.

We have determined that individuals that are no longer working are listed as active due to:

a. Pass not turned in.

b. Lag time in deactivating passes.

c. Failure of an updated E-pass system to interface with the WAVES system.

Question 4. Please state, to the extent possible, the number of "disconnects" identified when the lists were first compiled that were caused by computer malfunction, the number caused by the failure of an employee to return a pass, and the number caused by other factors (and specify those factors).

Answer 4. I cannot identify the number of disconnects that were caused by computer malfunction, failure to return a pass, or other factors.

Question 5. How many "disconnects" are on the list received by your office in June, 1996?

Answer 5. There were 19 inactive staff, whose records are maintained by the Human Resources Management Division, showing with active passes in the WAVES system in June, 1996.

Question 6. Has the Secret Service explained the reasons for the June, 1996 "disconnects"?

Answer 6. No, the Secret Service has not explained the reasons for the June, 1996, disconnects.

ATTACHMENT A.—NUMBER OF INACTIVE STAFF SHOWN AS ACTIVE PASSHOLDERS ON THE WAVES FILE MAINTAINED BY THE USSS

1994	1995	1996
Not available	January—21	Not available.
Not available	February—27	February—15.
Not available	March—19	March—13.
Not available	Not available	April—19.
Not available	Not available	May—19.
Not available	Not available	June—19.
Not available	July—14	Not available.
Not available	August—10	Not available.
Not available	Not available	Not available.
Not available	October—18	Not available.
Not available	November—20	Not available.
December—34	Not available	Not available.

RESPONSES OF CHARLES EASLEY TO QUESTIONS FROM SENATOR HATCH

Questions to Mr. Charles Easley

Question 1. As a Security Officer of the Executive Office of the President did you ever attend meetings or discussions at the White House regarding the Clinton Administration's issuance of White House passes or security clearances? If so, please give the approximate dates, identify those persons with whom you spoke and the substance of these conversations or contacts.

Answer 1. I understand the term "security clearance" to refer to the process of allowing individuals access to information classified for national security purposes, based on a "need to know" basis. As part of my duties, I address issues involving security clearances and passes on a daily basis.

There were also meetings during the period of March to May 1994 concerning some White House personnel who had not yet received permanent passes, at which the issue of security clearances was discussed. Those attending from time to time included: David Watkins, Patsy Thomasson, John Cressman, Mark Gearan, Dee Dee Myers, Paul Toback, Chris Cerf and Jim Wolf. Before October 1995, I did not have any role in the issuance of security clearances for White House personnel and, therefore, do not have knowledge of meetings.

Question 2. Did you ever have discussions with the Secret Service regarding the issuances of White House passes or security clearances during the Clinton Administration? If so, please give the approximate dates, identify those persons with whom you spoke and the substance of these conversations or contacts.

Answer 2. My duties require me to address these issues on a daily basis. I have had discussions with Secret Service about the issuance of many White House passes. We did not discuss security clearances. The Secret Service agents with whom pass issues were discussed included Arnold Cole, Jeff Undercoffer, Paul Kelly, Tom Farrell, David Carpenter, Jeanie Mitchell and additional persons whose names I do not remember.

Question 3. Did you ever have discussions with the FBI regarding the issuances of White House passes or security clearances during the Clinton Administration? If so, please give the approximate dates, identify those persons with whom you spoke and the substance of these conversations or contacts.

Answer 3. The FBI performs background investigations. There were no discussions about security clearances or passes. The FBI did not have any involvement in the adjudication of whether an individual was suitable to receive a pass other than providing information during the course of, or at the conclusion of, its background investigation.

Question 4. Have you ever had discussions with the Secret Service regarding the adjudication of security clearances during the Clinton Administration? If so, please give the approximate dates, identify those persons with whom you spoke and the substance of these conversations or contacts.

Answer 4. No. Secret Service did not have any involvement in security clearances, only with the eligibility of persons to receive a pass to the White House complex. Prior to October 1995, I was not involved in the issuance of security clearances for the White House personnel. In October, 1995, I became involved in the issuance of security clearances for White House Office staff which was done in conjunction with the agency that employed the individual.

Question 5. Please describe in detail the process employed by the White House in adjudicating security clearances for White House personnel.

Question (a). Since your employment as E.O.P. Security Officer has the process by which security clearances are issued changed from previous Administration?

Answer (a). The process for issuance of security clearances is described in my responses to Questions 25(a) and (b).

Question (b). What role do you currently play in the issuance of security clearance to White House personnel?

Answer (b). Currently, I am involved in the determination of the issuance of security clearances. The employing agency requests that a security clearance be granted. The individual fills out a Standard Form 86 and IRS tax waiver form. I receive the background information directly from the FBI and, if any issues arise for adjudication, I confer with the designated Associate White House counsel. Each person must sign a non-disclosure agreement to safeguard any classified information.

Question c. What role do you currently play in the notification of the Secret Service of White House personnel who have been granted security clearances, or who should be issued permanent White House passes?

Answer c. I do not inform the Secret Service about security clearances but only advise the Secret Service of those persons who have been recommended to receive passes to the White House complex.

Question 6. Have you had discussions with anyone at the White House regarding about the utilization of the interns or volunteers in White House offices where sensitive, confidential or classified material is routed or stored? If so, please give the approximate date of such conversations, with whom you spoke and the substance of each conversation of contact.

Answer. No.

Question 7. To your knowledge, does the White House have any policies or guidelines regarding the use of interns or volunteers in offices where sensitive, confidential, or classified information is routed or stored?

Answer 7. The White House does have policies concerning the use of interns or volunteers. Interns receive a briefing that stresses they cannot see or handle classified information or be in a room where classified information is being openly displayed. In addition, they are advised not to provide information to anyone outside of the White House until such disclosures are approved.

Similarly, volunteers who receive passes are required to attend the White House briefing on security and are instructed not to see or handle any classified information or be in a room where such information is openly displayed.

Instruction sheets are disseminated to interns and volunteers admonishing them not to disclose any information that could be considered sensitive or confidential. They then sign these forms.

Question 8. Please refer to page five of your Judiciary Committee interview, who did you meet with concerning general management procedure in your office in an effort to straighten out the Office of Personnel Security problems?

Question a. When did this meeting occur?

Answer a. Meetings occurred on March 15, 17, April 7, and May 18, 1994 although there may have been additional meetings. Present at the meetings were: David Watkins, John Cressman, Patsy Thomasson, Mark Gearan, Dee Dee Myers,

Paul Toback, Chris Cerf and Craig Livingstone. All these individuals were not present at each meeting. Rather, this is my best recollection of persons who were present at any of these meetings.

Question b. What was the substance of these conversations and/or contacts?

Answer b. We discussed gathering of information to respond to a GAO audit regarding the issuance of White House passes. A staff memo had recently been issued that established deadlines for when security forms needed to be completed for the start of the process to receive a permanent White House pass. I suggested that I work directly with the FBI on the background investigations in order to expedite the process of granting passes for the White House complex. We also discussed the need for formal security clearance procedures for the White House staff.

Question 9. On page five of your Judiciary Committee interview, you stated that procedures were changed and you started issuing permanent passes to White House employees.

Question a. Please explain the procedures which were in place prior to this change, and how long these procedures had existed.

Answer a. After I received a request for a pass, I notified Director of the Office of Personnel Security, that, in turn, requested that the FBI perform the background investigation. Upon completion the FBI transmitted the background investigation to an Associate White House Counsel who, in turn, returned it to Office of Personnel Security. It was then sent it to me. These procedures had been in place since I joined the EOP in October 1986 except in prior Administrations, the background investigations were sent directly to the Office of Personnel Security.

Question b. Please explain the new procedure which was implemented.

Answer b. The major change in procedure was the decision for me to deal directly with the FBI concerning background investigations and, shortly thereafter, directly with the Secret Service on permanent passes for those agencies whose personnel security matters were my responsibility.

Question c. Explain your duties and responsibilities under this new procedure.

Answer c. Under the new procedures, for those agencies within my responsibilities, I would communicate directly with the Secret Service about the issuance of a permanent White House pass or with the FBI which, after completion of the background investigation, would provide the results directly to me.

Question 10. During your Judiciary Committee interview, you indicated your office receives a monthly Secret Service list.

Question a. Have all the lists that your office received from the Secret Service been lists of active pass holders only?

Answer a. Yes. I received, on a monthly basis, a list of persons with temporary passes and the expiration dates. Also, when requested by me, I would receive the listing of permanent passholders. Otherwise, this list would be provided approximately every 3-4 months.

Question b. Has your office ever received a list from the Secret Service which included active and inactive pass holders—which was designated by an 'a' and "i" next to the individual's name?

Answer b. No. As I have stated during my deposition, I have not seen a Secret Service list that included active and inactive passholders with identification marks.

Question 11. Does your office have any role or responsibility to advise the Secret Service of employees who no longer require access to the White House?

Answer 11. Yes. I would notify the Secret Service for persons who no longer required access to the White House complex or verify that a check out sheet had been signed by the Secret Service.

Question 12. During your staff interview, you stated there is a surf database, security database and bunny database. Please describe each database in terms of what information is stored in the database and the office that oversees the operation of the database. Indicate the date of formulation or creation of the database, operational date, if you know, and the persons involved in the creation of each database for persons who are currently working at the White House complex.

Answer 12. The security database is a tracking system that is used for among other items, to list: (1) dates for granting security clearances; (2) dates when a background investigation needs to be "up-dated"; (3) the pending background investigations; and (4) the security clearances by agency and the level of security. Among other information, these databases include the date of the issuance and expiration of any temporary passes along with confirmation of a name check and IRS check. Entry of this information is made when the individual started work. The WAVES database is maintained by the Secret Service and reflects entry and exit from the White House complex, lists temporary and permanent passholders, appointments

and White House access lists. The "bunny database" (EOP directory) is a combination of these and other different databases. I do not know the term "surf database." The reference on page 16, line 23 of the deposition is a transcription error. My statement was "[t]here are several databases."

Question 13. Where you involved in the creation of a special database for the General Accounting Office review of the White House Office of Personnel Security and Security Clearances? If so, explain your involvement in this matter.

Answer 13. I was not involved in the creation of a special database for the General Accounting Office review of the White House Personnel Security and Security Clearances. To the best of my knowledge, a special database was not created for the General Accounting Office. I am aware that a "spreadsheet" was generated for employees at the White House complex, who began work after January 30, 1993, including at least persons at the Office of Administration, Office of National Drug Control and Policy, Office of Technology and Science, Council of Economic Advisors, and Council of Environmental Quality and contractors for these agencies.

Question 14. Did you participate in any meetings with the Secret Service concerning problems with FBI background investigation of potential Clinton Administration personnel? Please provide details without identifying any employees name. Give the approximate date of each such meeting or conversation, the location of each meeting and with whom you spoke.

Answer 14. Before June 19, 1996, I met, on many occasions, with the Secret Service concerning the FBI background investigations of employees for whom I served as a security officer. Among the Secret Service agents with whom I met were Arnold Cole, David Carpenter, Tom Farrell, Jeff Undercoffer and others. Usually, the meetings were in Mr. Cole's or Mr. Farrell's office. The topic was eligibility issues for permanent passes to employees of the agencies for which I served as a security officer.

Question 15. During the Clinton Administration, the Secret Service was required to initiate a permanent pass change.

Question a. Do you recall when the permanent pass change was initiated?

Answer a. Changes to passes began on January 20, 1993.

Question b. Were all permanent White House pass holders asked to turn in their old pass and were they given new passes that were color coded differently?

Answer b. Yes. White House pass holders, who were "hold over employees" from prior Administrations, were given nine months to comply with the change in procedures and new color coded passes were issued.

Question 16. Were you surprised to learn that the White House Office of Personnel Security had used interns or volunteers in that office even though sensitive FBI background material was routed and stored in that office?

Answer 16. While I was aware that interns were used in the Office of Personnel Security, I was concerned that persons without security clearances were allowed in that area. I was told that they received instructions about the confidentiality and restrictions on disclosure of sensitive information.

Question 17. Does your office use interns or volunteers? If so, explain their duties and the safeguards employed to ensure that these individuals did not have access to sensitive, confidential or classified material?

Answer 17. No.

Question 18. On page 31 of your Judiciary Committee interview, you stated that six months into the Clinton Administration, a system was set up where your office dealt directly with the FBI.

Question a. What led to this system being set up?

Answer a. The reason for the new procedures, which began in Spring 1994, was to reduce the number of cases reviewed by Office of Personnel Security, whose director was Craig Livingstone, and to expedite cases so that I could comply with the new requirement and law concerning the completion of all background investigations.

Question b. Who did you have discussions with at (i) the White House (ii) FBI (iii) Secret Service regarding this change?

Answer b. I did not have any conversations with the Secret Service or the FBI. At the White House, I spoke with Craig Livingstone, Patsy Thomasson, David Watkins, and Bill Kennedy among others.

Question c. Did the White House and/or your office enter into any agreement with the FBI prior to the initiation of this new system?

Answer c. No. Craig Livingstone did send a letter to the FBI explaining that I would be dealing directly with the FBI on background investigations.

Question d. Please describe the process by which your office receives FBI files.

Answer d. The FBI would send files by courier directly to my office.

Question 19. Please describe the occasion and circumstances in which you met Mr. Marceca.

Answer 19. I met Mr. Marceca in Mr. Livingstone's office shortly after Mr. Marceca started work in 1993. Craig Livingstone introduced him to me.

Question 20. Mr. Marceca's detail in the White House Office of Personnel Security ended in February 1994. Do you recall seeing Mr. Marceca at the White House after February 1994?

Answer 20. No.

Question a. Did you see him often after February 1994? Please give an approximate number of times you saw him.

Answer a. No, I did not see him after February 1994.

Question b. To your knowledge, after Mr. Marceca's detail ended in February 1994, did Mr. Marceca check out of your office turning in his badge?

Answer b. Mr. Marceca was detailed to the White House and would not have checked out through my office.

Question c. To your knowledge, was Mr. Marceca allowed to retain his White House pass after February 1994?

Answer c. Mr. Marceca retained a volunteer pass. At the request of the White House Personnel Security office, the Secret Service deactivated Mr. Marceca's volunteer pass on May 17, 1995.

Question d. To your knowledge, was Mr. Marceca listed as a White House volunteer after his detail ended in February 1994?

Answer d. Yes. He was placed on the White House volunteer access list until June 21, 1996 when I had his name removed.

Question 21. Did Mr. Marceca ever discuss with you his desire for an appointment as a United States Marshal or Inspector General?

Answer 21. No.

Question 22. On page 32 of your Judiciary Committee interview, you stated that you discussed with Mr. Livingstone on one occasion the problems with the Secret Service lists.

Question a. When did this conversation occur?

Answer a. This discussion occurred in early 1994 after Mr. Marceca left.

Question b. Where did this conversation take place? Was it a phone call?

Answer b. We met in Room 84 of the Old Executive Office Building.

Question c. Identify all persons who were present at the discussion.

Answer c. In addition to Mr. Livingstone and me, Mari Anderson may have been present.

Question d. Did Mr. Livingstone indicate to you that all lists his office had received from the Secret Service had been active pass holder lists?

Answer d. No. Mr. Livingstone was sitting with a WAVES print out. He complained that the list contained numerous persons who were inactive and he was listing out the names of the passholders who should have been removed.

Question e. Did Mr. Livingstone indicate any knowledge as to the actual list(s) that Mr. Marceca used to request the FBI background files in question?

Answer e. No.

Question f. Did you advise Mr. Livingstone that your belief or experience had been that the Secret Service lists had contained errors in the past?

Answer f. Yes.

Question 23. On page 34 of your Judiciary Committee interview, you stated that the White House Counsel's Office previously had the responsibility for decisions as to suitability in whether or not a permanent pass would be issued.

Question a. When did this procedure change?

Answer a. To clarify my testimony, beginning on June 19, 1996, I have worked with White House Counsel to decide the suitability of an individual for employment and whether to send a request for a permanent White House pass to the Secret Service. That process has not changed.

Question b. What is the current procedure for the determination of suitability?

Answer b. The determination of suitability is made by me in coordination with agency counsel according to the OPM adjudication standards. I receive a background investigation directly from the FBI. If no issues are raised in the background investigation, then I send the request to the Secret Service for a permanent pass. If there are any issues raised concerning suitability, I confer with counsel for the agency

where the person is working and then together we adjudicate any issues. Therefore, White House Counsel is involved for any persons who work at the White House Office.

Question c. Currently, who has the authority to determine suitability?

Answer c. I currently have the authority along with the counsel for the agency, if there are any questions about suitability for employment.

Question 24. What role does Jodie Torkelson Assistant to the President for Management and Administration play in White House pass approval?

Answer 24. Jodie Torkelson makes the final management decision on whether an individual requires a White House or other pass in order to fulfill his/her duties. That decision forms, in part, the basis for any pass request to the Secret Service.

Question 25. On page 35 of your Judiciary Committee interview, you stated that in October of 1995, the Clinton Administration changed the process wherein security clearances were granted and you were given the responsibility or authority to grant security clearances.

Question a. What led to this change?

Answer a. The new Executive Order 12968 identified the White House as an entity that was required formally to grant security clearances. After meeting with White House counsel and others, we agreed that formal procedures for the issuance of security clearances should be instituted.

Question b. Please describe the review process and criteria used by your office in making a determination to grant a security clearance.

Answer b. Similar eligibility criteria used in determining eligibility for a permanent White House pass are also applied to those individuals who have been identified as requiring security clearances. We would require individuals to sign a standard form 312 concerning non-disclosure and watch a brief instruction video on handling and processing of classified information.

Question 26. Please provide a Standard Form 312 for the record.

Answer 26. A copy is attached as Exhibit A.

Question 27. Please provide the dates on which the following individuals from the White House Office of Personnel Security received their security clearances.

Answer 27. Consistent with the practice of prior Administrations, the persons listed below had received a permanent White House pass which was the equivalent of a Top Secret security clearance, based on a "need to know" basis. Craig Livingstone received a temporary SCI clearance in May 1993 before this permanent pass was issued. See Response 25(b). Following the issuance of Executive Order 12968, formal security clearances were issued as indicated below.

a. Craig Livingstone—12-14-95.

b. Mari Anderson—Left before effective date of granting formal security clearances to White House staff.

c. Lisa Wetzl—Left before effective date of granting formal security clearances to White House staff.

d. Edward Hughes—12-7-95.

e. Jonathan Denbo—12-8-95.

If your office records indicate that any of these individuals had previously been granted a top secret clearance by any other office or law enforcement agency, please indicate the dates and previous clearance level granted for each person.

My office does receive records of other security clearances. Further, I am aware that Craig Livingstone received SCI Clearance from the CIA in May 1993. The other persons listed in Response 27 also had SCI Clearance.

RESPONSES OF CHARLES EASLEY TO WRITTEN QUESTIONS FROM SENATOR BIDEN

Question 1. At the hearing on June 28, 1996, a letter was read into the record from Mr. Philip Larsen responding to your testimony concerning Mr. Larsen's visit to the White House many years after he was no longer employed there. What is your response, if any, to this letter?

Answer 1. I worked for Philip Larsen. We talked many times about the Secret Service list. Philip Larsen was concerned that the printout had inactive names on it and that the Secret Service was not removing such names. I believe that is the reason that he told me the story about returning to work after many years and learning that his name was still on the active employee list according to the Secret Service officer on duty at the front desk.

Question 2. Please describe any other instances with which you are familiar where individuals who no longer worked at the White House were listed as "active" on the Secret Service's list of passholders.

Answer 2. While there were many other names, some examples that I recall are Paul Bateman and James Baker. I also recall going to Craig Livingstone's office where I saw him crossing names off a WAVES center list. He told me that there were many names on the list even though the persons had left the White House.

CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

AN AGREEMENT BETWEEN

AND THE UNITED STATES

(Name of Individual - Printed or typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is marked or unmarked classified information, including oral communications, that is classified under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security; and unclassified information that meets the standards for classification and is in the process of a classification determination as provided in Sections 1.1 and 1.2(e) of Executive Order 12356, or under any other Executive order or statute that requires protection for such information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised that the unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause damage or irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge classified information to anyone unless: (a) I have officially verified that the recipient has been properly authorized by the United States Government to receive it; or (b) I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) responsible for the classification of the information or last granting me a security clearance that such disclosure is permitted. I understand that if I am uncertain about the classification status of information, I am required to confirm from an authorized official that the information is unclassified before I may disclose it, except to a person as provided in (a) or (b), above. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; or the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised that any unauthorized disclosure of classified information by me may constitute a violation, or violations, of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and *952, Title 18, United States Code, *the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation of classified information not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all classified information to which I have access or may obtain access by signing this Agreement is now and will remain the property of, or under the control of the United States Government unless and until otherwise determined by an authorized official or final ruling of a court of law. I agree that I shall return all classified materials which have, or may come into my possession or for which I am responsible because of such access: (a) upon demand by an authorized representative of the United States Government; (b) upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance or that provided me access to classified information; or (c) upon the conclusion of my employment or other relationship that requires access to classified information. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

10. These restrictions are consistent with and do not supersede, conflict with or otherwise alter the employee obligations, rights or liabilities created by Executive Order 12356; Section 7211 of Title 5, United States Code (governing disclosures to Congress); Section 1034 of Title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); Section 2302(b)(8) of Title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents), and the statutes which protect against disclosure that may compromise the national security, including Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, and Section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. Section 783(b)). The definitions, requirements, obligations, rights, sanctions and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

(Continue on reverse.)

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Exhibit A

312-102

STANDARD FORM 312 (REV. 1-91)
Prescribed by GSA/ISO
32 CFR 200.3, E.O. 12356

11. I have read this Agreement carefully and my questions, if any, have been answered. I acknowledge that the briefing office has made available to me the Executive Order and statutes referenced in this Agreement and its implemenung regulation (32 CFR Section 2003.20) so that I may read them at this time, if I so choose.

SIGNATURE	DATE	SOCIAL SECURITY NUMBER (See Notice below)
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ORGANIZATION (IF CONTRACTOR, LICENSEE, GRANTEE OR AGENT, PROVIDE: NAME, ADDRESS, AND, IF APPLICABLE, FEDERAL SUPPLY CODE NUMBER)
(Type or print)

WITNESS	ACCEPTANCE	
THE EXECUTION OF THIS AGREEMENT WAS WITNESSED BY THE UNDERSIGNED.	THE UNDERSIGNED ACCEPTED THIS AGREEMENT ON BEHALF OF THE UNITED STATES GOVERNMENT.	
SIGNATURE	DATE	SIGNATURE
NAME AND ADDRESS (Type or print)	NAME AND ADDRESS (Type or print)	

SECURITY DEBRIEFING ACKNOWLEDGEMENT

I reaffirm that the provisions of the espionage laws, other federal criminal laws and executive orders applicable to the safeguarding of classified information have been made available to me; that I have returned all classified information in my custody; that I will not communicate or transmit classified information to any unauthorized person or organization; that I will promptly report to the Federal Bureau of Investigation any attempt by an unauthorized person to solicit classified information, and that I (have) (have not) (strike out inappropriate word or words) received a security debriefing.

SIGNATURE OF EMPLOYEE	DATE
NAME OF WITNESS (Type or print)	SIGNATURE OF WITNESS

NOTICE: The Privacy Act, 5 U.S.C. 552e, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, b) what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 13397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations, or possibly result in the denial of your being granted access to classified information.

* NOT APPLICABLE TO NON-GOVERNMENT PERSONNEL SIGNING THIS AGREEMENT.

STANDARD FORM 312 BACK (REV. 1-9

SEPTEMBER 25, 1996

RESPONSES OF HOWARD SHAPIRO TO QUESTIONS FROM SENATOR BIDEN

Question 1. When the FBI provided access to the background investigations of Mr. Livingstone and Mr. Marceca to a staff member and member of the House Government Reform Committee did the FBI—

- A. Inquire whether the staff member had a security clearance.
- B. Place any restrictions on the taking of notes or the storage of such notes.
- C. Place any restrictions on the use of information contained in the files.

Answer 1. The FBI's Congressional Affairs Office (CAO) made the arrangements for the review of the Livingstone and Marceca background investigation files. The CAO did not specifically inquire whether the staff member had a security clearance, but the staff member had mentioned during an unrelated discussion that she had had a security clearance when working previously at the Department of Justice. Because there was no classified information being disclosed, there was no reason to inquire further.

The FBI did not place any explicit restrictions on the taking of notes, the storage of such notes, or the use of the information contained in the files. The documents were made available, of course, pursuant to the House Government Reform Committee's oversight investigation. Throughout the course of that investigation, the FBI and the Department of Justice have emphasized in their communications with the Committee the sensitive nature of many of the documents being provided and have requested appropriate handling and security of such documents. Prior to providing access to the background investigative files, the FBI discussed with the Committee staff the sensitive nature of the information in these files and expressed concern that further disclosure could jeopardize the privacy of the persons investigated.

Question 2. What is the FBI policy concerning congressional requests for access to FBI background investigations? Are there any limits on the power of a congressional committee or individual member to obtain access to a background investigation?

Answer 2. While there are detailed MOUs that govern access to background investigations of certain congressional employees and for persons being considered for Senate confirmation, there are no specific guidelines for congressional requests that fall outside of those categories. As you know, the Privacy Act, at 5 U.S.C. § 552a(b)(9), specifically authorizes the disclosure of otherwise protected information to a Committee of the Congress. Therefore, if the FBI receives an official request for access to a background investigation from a congressional committee pursuant to a matter within its jurisdiction, it will provide such access. As appropriate, we would discuss with committee Members and staff the sensitive nature of the information in the file and caution against unnecessary dissemination or disclosure. Because the Privacy Act does not make an exception for requests from Members of Congress acting in their individual capacities, we would not disclose background investigations to individual Members unless the request was made on behalf of a committee.

Question 3. Did the FBI ask Mr. Livingstone or Mr. Marceca whether they consented to review of their FBI file by the House Government Reform Committee? Is such consent currently required if the White House requests access to the file of one of its employees?

Answer 3. No, the FBI did not ask for consent from Mr. Livingstone or Mr. Marceca. It provided access to the files in response to a formal written request by the Chairman of the House Committee on Government Reform and Oversight, as part of the Committee's oversight investigation. Because the Privacy Act expressly exempts such congressional requests from its provisions, the FBI did not believe it was in a position to impose on the Committee a consent requirement that did not exist in applicable law or procedures.

With respect to White House requests, there is a consent requirement. At the time I issued my June 14, 1996, Report on "The Dissemination of FBI File Information to the White House," I also recommended that we redesign the process by which the FBI provides file information to the White House. Following adoption of these recommendations by Director Freeh and Deputy Attorney Gorelick, we implemented new procedures which include the following requirement:

"Any White House request seeking copies of our information distilled from FBI files must be accompanied by either the consent of the person whose files are being reviewed, or by a letter from the Counsel to the President through the Deputy Attorney General to the FBI General Counsel, setting forth a written explanation why such consent cannot be obtained or should not be sought in the circumstances."

There have been approximately 1600 requests from the White House since these new procedures were implemented, and each of these requests was accompanied by the consent of the individual.

Question 4. Did Mr. Aldrich submit the book "Unlimited Access" to the FBI for prepublication review?

Answer 4. Yes. (At the time Mr. Aldrich submitted the original manuscript, the book was entitled "Character Matters.")

Question 5. Did the FBI suggest that portions of the book not be published? Approximately how many pages (or paragraphs if that is more convenient) did the FBI suggest be deleted? How many of these pages (or paragraphs) were actually deleted before the book was published?

Answer 5. Yes, pursuant to our prepublication review process, the FBI did request that certain portions of the book not be published. Because most of our requests sought revisions rather than deletions, it is difficult to provide a meaningful number of the "pages or paragraphs" we asked to be "deleted." In fact, with respect to many passages in the manuscript, we told Mr. Aldrich that the problems could be solved by adding, rather than deleting, material (for example, by identifying a public source for the information contained in those passages.) In order to provide you with a meaningful picture of the review process, I have attached a complete set of the correspondence between the FBI and Mr. Aldrich's lawyer on this matter. If I can provide further details, please let me know.

Question 6. Are all FBI agents required to sign an agreement that they "will never divulge, publish, or reveal * * * without official written authorization by the Director of the FBI * * * any information from the investigatory files of the FBI [or] * * * material acquired as part of the performance of * * * official duties"?

Answer 6. Yes, the quoted language is from a standard employment agreement required of all FBI employees. The specific language of the agreement has changed somewhat over the years, but the fundamental confidentiality requirement has remained intact. When Mr. Aldrich became an FBI agent in 1969, he signed several employment agreements, which contain the following provisions, among others:

"[T]hat the strictly confidential character of any and all information secured by me, in connection directly or indirectly with my work as a Special Agent, or the work of other employees of which I may become cognizant, is fully understood by me, and that neither during my tenure of service with the Federal Bureau of Investigation nor at any time shall I violate this confidence, and I agree and affirm that I shall not divulge any information of any kind or character whatsoever that may become known to me, to persons not officially entitled thereto at any time.

* * * * *

"While occupying the status of a law enforcement officer or at any other time subsequent thereto, I shall not seek to benefit personally because of my knowledge of any confidential matter which has come to my attention."

Question 7. In the opinion of the FBI, did Mr. Aldrich violate this agreement by publishing the book "Unlimited Access" without deleting all the material objected to by the FBI?

Answer 7. Yes.

Question 8. Has the FBI recommended that legal action be taken against Mr. Aldrich by the Justice Department? If so, what action did the FBI recommend be taken? Has any action been taken by the Justice Department?

Answer 8. The FBI believes that these employment agreements should be strictly enforced, and we have urged the Department of Justice to scrutinize closely all incidents in which an FBI employee or former employee fails to comply with our pre-publication review requirements. With respect to the book published by Mr. Aldrich, the FBI has referred the matter to the Civil Division of the Department of Justice for a litigative opinion on whether a viable civil suit can be brought against Mr. Aldrich. The FBI will make a formal recommendation once that litigative opinion has been received. My understanding is that the Justice Department is still reviewing the matter and has not yet reached a decision or taken any action.

Question 9. What sanctions, criminal or otherwise, have been imposed on former FBI agent Gary Harlow? What were the charges against him? How were the charges resolved?

Answer 9. I am advised that on May 30, 1995, the FBI initiated an administrative inquiry into allegations that Mr. Harlow has falsified interviews in the course of conducting FBI background investigations. In November 1995, the FBI initiated a criminal investigation of allegations that Mr. Harlow had unlawfully converted government property. The grand jury returned a 17-count indictment against Mr. Harlow, charging him with six counts of conversion of government property in violation

of 18 U.S.C. § 641, and eleven counts of making false statements in violation of 18 U.S.C. § 1001. Each of the false statement counts involved the falsification of documents relating to background investigations. On March 1, 1996, in U.S. District Court in the Eastern District of Virginia, Mr. Harlow pleaded guilty to three counts: two § 641 counts and one § 1001 count. During the sentencing proceedings, Mr. Harlow admitted to falsifying 55 background investigative interviews. Mr. Harlow is presently serving a six-month sentence at the federal prison in Allentown, PA.

Question 10. How many years did Agents Harlow, Sculimbrene, and Aldrich work for the FBI at the White House? What were their responsibilities?

Answer 10. Former Special Agent Harlow conducted investigations at the White House from April 1993 to June 1994. Retired Agent Sculimbrene conducted investigations at the White House for approximately 17 years, until his retirement in August 1996. Retired Agent Aldrich conducted investigations at the White House for approximately five years, until his retirement in June 1995.

The three agents were responsible for conducting special inquiries, which are background investigations for persons under consideration for Presidential appointments, staff members at the White House, the National Security Council, various congressional committees, and persons who require frequent access to the White House complex. The background investigation is a comprehensive inquiry designed to verify background data provided by the subject of the investigation and to gather information to assist the government entity in the process of determining the subject's suitability for federal employment and/or access to classified national security information. In performing these tasks, the agents' primary responsibilities were to conduct interviews of appointees as well as the appointees' supervisors, coworkers, and references. In addition, they were responsible for making appropriate records checks.

Agents Sculimbrene and Aldrich were assigned to conduct these background investigations at the White House on a long-term basis. Other agents, including Agent Harlow, were assigned on a temporary basis to assist with investigations at the White House when the volume of work required extra manpower.

Question 11. Has the FBI considered limiting tours of duty for FBI agents assigned to conducting background investigations of White House employees? If so, why is the FBI considering this change in policy?

Answer 11. Yes. On August 6, 1996, Director Freeh issued new guidelines which include the following provision: "The term of an assignment of a Special Agent to conduct [special inquiry] investigations at the White House shall be no longer than eighteen (18) months." The Director made this change in policy to help ensure that the FBI can carry out its investigative mission independently. Limiting tours of duty at the White House is one way to avoid even the appearance that the Agents may be subject to inappropriate influences.

In addition to limiting tours of duty, the new procedures also provide that the office space provided to the FBI in the Old Executive Office Building shall be used only to conduct interviews of individuals who work within the White House complex. The Agents conducting special inquiry investigations may not use this space to prepare investigative reports on the interviews; such reports are to be prepared at the field office or resident agency or in other appropriate space outside of the White House complex.

Question 12. Provide the date, if any, since January 20, 1993, that requests for previous reports on the individuals listed below were made by the White House. If the name does not appear on any computer database maintained by the FBI, please conduct a manual review of the file to determine if a request for previous report had been made during the relevant time period.

Ashby, Donald
 Baker, Johnny B.
 Boyer, Gerald F.
 Brady, Ronald B.
 Brandts, Charles D.
 Cleary, Philip P.
 Cook, John R.
 Datcher, Jerry B.
 Dufrane, Stanley L.
 Dyson, James K.
 Eiland, Johnnie L.
 Feeney, Charles W.
 Geer, Thomas S.
 Grier, Ophelia L.
 Haney, Dale F.

Kenoyer, Janet E.
 Lawn, Michael D.
 McDaniel, James I.
 Mohr, Paula A.
 Napoli, Richard P.
 Parrotte, Willis R.
 Reiter, Mary E.
 Roberts, Kitty L.
 Schneider, Ludwig A.
 Summerlin, Michael T.
 Tennyson, Kevin W.
 Thomas, Edward A.
 Thomas, Harold W.
 Wallington, Alexander
 Wedge, William J.
 Whiting, Samuel P.
 Williams, Irvin M.
 Wise, John O.

Answer 12. I am informed that the White House did not request a previous report or Paula A. Mohr in the 1993-96 period, but did request previous reports on the remaining 32 individuals listed above. The FBI received the White House requests for 31 of those 32 individuals on July 30, 1993; the request for Richard P. Napoli was received on August 15, 1994.

RESPONSES OF HOWARD SHAPIRO TO QUESTIONS FROM SENATOR GRASSLEY

Question 1. You mentioned in your written statement that the interview of agent Sculimbrene by agents you sent was for internal reasons.

Question a. Please cite under what authority you acted under in ordering line agents to do this interview.

Answer 1a. As FBI General Counsel, I provide advice to Director Freeh and other senior FBI officials on a wide range of legal and policy issues. In order to give that advice, virtually every workday I engage in internal factfinding by consulting with employees throughout the FBI, as do other senior FBI managers. While there is no internal rule explicitly stating that the General Counsel may call upon Agents or other FBI employees to assist in performing this function, it is intrinsic to all senior management positions.

The decision to interview Agent Sculimbrene was part of this internal factfinding process. After the 1993 Nussbaum interview report surfaced on July 15, 1996, my Deputy General Counsel, a 27-year veteran FBI agent and 11-year incumbent as Deputy, recommended that Agent Sculimbrene be contacted for the sole purpose of determining whether there was additional information relating to that report. I agreed that we should obtain the answer to that question, and also agreed that it was logical and appropriate to use Special Agent Duncan Wainwright, who had substantial experience in the Inspection Division and had assisted me in my June 1996 inquiry into the dissemination of FBI files to the White House.

Question b. Was Director Freeh notified or aware of your actions before the interview took place? If so, what was his response to your actions? If not, what was his response to you after he was notified?

Answer b. No, Director Freeh was not aware of the Sculimbrene interview before it took place. I informed the Director after the fact, and he briefly expressed his concern about how the interview would be perceived.

Question c. If the interview and its contents were for internal use only, how and why did we read about the contents of the interview in the media soon afterwards?

Answer c. The interview was conducted solely for the FBI's internal purposes, and the FBI did not disclose the contents of the interview to anyone in the media. To my knowledge, the first time the interview was revealed publicly was on the afternoon of July 25, 1996, when Chairman Clinger gave a speech on the floor of the House of Representatives. My understanding is that Agent Sculimbrene or his attorney had advised congressional staffers of the interview prior to its being made public.

Question d. Do you agree that you may have raised a conflict of interest when you inserted yourself into an operational matter when you were then in a position of advising the Director on that same matter?

Answer d. It is not clear to me what is meant by the term "operational matter." Regardless of how that term is defined, however, I do not believe that my involve-

ment in the decision to interview Agent Sculimbrene raised any conflict of interest. Like all senior managers in the FBI, I am often called upon to identify, investigate, and solve problems of all kinds within the Bureau. In many instances, such as the internal inquiry that led to my June 14, 1996, Report on the Dissemination of FBI Information to the White House, I could not perform this function without using the services of FBI Agents. There is nothing unusual about undertaking such tasks, and I do not believe it compromises my ability to give sound legal advice to the Director or other Bureau officials.

Question 2. During a House hearing you were asked if you had discussed any kind of judgeship position with the Administration. You never actually gave a response that was on point. The question was asked in the context of you giving the White House a heads-up possibly to help make up for the negative report on the Filegate matter you released earlier.

Answer 2. During the House Committee hearing on August 1, 1996, Congressman Horn asked me if I had called the White House "to curry favor with them to be a judge." I responded that my career record demonstrated that I had never acted to curry favor with anyone. I believe this was a responsive answer.

Question a. I would just like to reiterate the question. Have you ever directly or indirectly, through another or on your own, discussed with anyone or made inquiries regarding your obtaining any kind of judicial nomination?

Answer a. I have made no effort, directly or indirectly, to obtain a judicial nomination from this or any other Administration. Neither has anyone ever indicated to me that I have been under consideration for such a nomination.

Question 3. In testimony before the House, you stated you had worked on political campaigns in 1980, but did not indicate whose campaign you worked on. Please identify all political campaigns you have ever worked on and please identify the party affiliation of each.

Answer 3. In 1980, as part of a college Winter Study course, I accompanied my professor, James MacGregor Burns, as he toured colleges in Iowa speaking on behalf of Senator Edward Kennedy's campaign for the Democratic nomination for President. I have not been involved in any other political campaign. Indeed, as a career Department of Justice attorney since 1987, I have been subject to the provisions of the Hatch Act during every campaign season.

RESPONSES OF HOWARD SHAPIRO TO QUESTIONS FROM SENATOR LEAHY

Question 1. Who referred the matter of your contacts with the White House to the Justice Department's Office of Professional Responsibility (OPR)?

Answer 1. It is my understanding that this matter was referred to OPR by Attorney General Janet Reno, in response to a request made by Congressman Bob Livingston on August 7, 1996.

Question a. OPR generally uses FBI agents to assist in its investigations. Do you know whether OPR is using any FBI agents in its examination of your conduct?

Answer a. OPR has not described to me the manner in which the inquiry is being conducted, and it is in a much better position to answer this question. It is my understanding that Agents from the FBI's Office of Professional Responsibility have assisted DOJ-OPR in the collection and transmittal of documents, but I am not aware of any investigative role being undertaken by FBI Agents.

Question b. Have you been interviewed by any FBI agents in connection with the OPR investigation of your contacts with the White House?

Answer b. No. Members of my staff have been interviewed by OPR attorneys from the Department of Justice.

Question c. By letter dated June 18, 1996, Chairman Stevens of the Senate Committee on Governmental Affairs requested that the Justice Department's Office of Inspector General (OIG) examine how the White House obtained access to FBI background files of former Republican Administration officials. Is that (OIG) investigation proceeding and, if not, why not?

Answer c. I am not aware of any OIG investigation, but this is a question that should be addressed by the Department of Justice. As you know, since June 21, 1996, Independent Counsel Kenneth Starr has been authorized to investigate whether Anthony Marceca violated federal law in connection with the White House requests for FBI background investigation reports between December 1993 and February 1994.

Question d. When questions about your conduct were raised, why were those questions not referred to the Inspector General?

Answer d. I am not able to answer this question. I was not consulted about the referral decision, which apparently was made by the Attorney General in response to a request from Congressman Livingston.

Question 2. You state in your written testimony that, “[v]irtually all of our operations, including background investigations, depend upon the cooperation of others.” What is the effect, if any, on the ability of the FBI to operate effectively and conduct background investigations when information from FBI background investigation files is made available to Members of Congress and their staff and appears in the Congressional Record without the consent of the individuals, who were either the subject of or interviewed for, background investigations?

Answer 2. In my view, there is no question that the FBI's ability to conduct effective background investigations is adversely affected by the public dissemination of sensitive information from background investigative files. Individuals being interviewed in the course of the background investigation must be assured that their comments will be handled confidentially. Without such assurances, these persons obviously will be more reluctant to provide candid information, which is critical to decisionmakers who must make difficult personnel and security determinations.

Question a. When the FBI turned over Messrs. Livingstone and Marceca's background investigation files to Republican Committee Staff and Members, did you consider requiring the written consent of Messrs. Livingstone and Marceca?

Answer a. No. The FBI provided access to the files in response to a formal written request by the Chairman of the House Committee on Government Reform and Oversight, as part of the Committee's oversight investigation. The Privacy Act expressly exempts such congressional requests from its provisions. Under the circumstances, the FBI did not believe it was in a position to impose on the Committee a consent requirement that did not exist in applicable law or procedures.

Question b. Would it be useful in your future dealings with Congress to have clearer guidelines and procedures for releasing sensitive, personal information to Congress?

Answer b. Yes. There are detailed MOUs that govern access to background investigations of certain congressional employees and for persons being considered for Senate confirmation. We have been working with the Deputy Attorney General's Office to refine the existing MOUs, and expect to have revised proposals in the near future. There are no specific guidelines for congressional requests that fall outside of the existing MOUs, such as those arising from congressional oversight investigations. In my opinion, the development of clearer guidelines and procedures certainly would assist the FBI in its efforts to accommodate such requests in a manner that protects sensitive personal information.

Question c. The new procedures for release of background information to the White House require that every request for records be accompanied by a written consent of the person whose file is requested, or a written explanation of why such consent cannot be obtained. Would such a requirement for release of sensitive, personal information from FBI files to Congress be helpful to obtain the cooperation of individuals that the FBI relies upon when conducting background investigations?

Answer c. In my opinion, any restriction on the dissemination of such information—including a consent requirement—would enhance the FBI's ability to obtain the cooperation of individuals being interviewed.

Question d. Given your experience in drafting and implementing procedures for release of information from FBI background investigation files to the White House, could you share your insights on what procedures would be helpful to apply to Congress?

Answer. As a general proposition, there should be a high threshold for any dissemination of information from FBI background investigation files. The existing congressional MOUs recognize the sensitivity of these files and provide a useful starting point for the development of procedures in other areas. We have been working with the Deputy Attorney General's Office to refine the existing MOUs, and expect to have revised proposals in the near future.

While the procedures incorporated in the MOUs are quite workable in the context of nominations and security determinations. I recognize that it is far more difficult to develop procedures to govern unforeseeable requests in other areas. For example, a rigid consent requirement may be unworkable or undesirable for certain congressional oversight investigations. While I am not in a position to fully evaluate the potential impact of additional restrictions on the congressional oversight process, I certainly am willing to work with you in your efforts to address this matter.

ADDITIONAL SUBMISSIONS FOR THE RECORD

SEPTEMBER 26, 1996

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535
January 4, 1996Mr. Jay Stevens
FAX 202-296-7605

Dear Mr. Stevens:

Following our conversation this morning, I thought it would be useful to clarify the current process of FBI prepublication review.

1. The prepublication review requirement is designed to eliminate unauthorized disclosure of information from FBI files, of classified or sensitive information, and disclosures which would otherwise violate federal statutes.
2. The requirement is governed by 3 authorities (attached): The **FBI Employee Agreement**, Title 28, Code of Federal Regulations, Section 17.144, and **MAOP**, Part I, Section 1-24.
3. Current and former employees must submit their manuscripts to OPCA for prepublication review prior to discussing them with, or showing them to, a publisher, coauthor, ghost writer, or any other unauthorized persons.
4. Upon formal receipt of the manuscript, the review clock starts ticking: Title 28, CFR, Section 17.144, requires that authors be furnished substantive responses within 30 working days.
5. Following initial review, OPCA refers manuscripts, excerpts from manuscripts, and policy matters to the appropriate substantive divisions by formal memoranda.
6. OPCA maintains liaison with the authors of the submitted manuscripts--and formally advises them, within 30 working days, whether, or under what conditions, approval for publication is granted (as per the responses from the substantive divisions).

Don't hesitate to call if you have any further questions.

Sincerely yours,

Patricia G. Solley
Office of Public and
Congressional Affairs

Enclosures (3)

EMPLOYMENT AGREEMENT

As consideration for employment in the Federal Bureau of Investigation (FBI), United States Department of Justice, and as a condition for continued employment, I hereby declare that I intend to be governed by and I will comply with the following provisions:

- (1) That I am hereby advised and I understand that Federal Law including statutes, regulations issued by the Attorney General and Orders of the President of the United States prohibit loss, misuse or unauthorized disclosure or production of information in the files of the FBI.
- (2) I understand that unauthorized disclosure of information in the files of the FBI or information I may acquire as an employee of the FBI could result in impairment of national security, place human life in jeopardy, or result in the denial of due process to a person or persons who are subjects of an FBI investigation, or prevent the FBI from effectively discharging its responsibilities. I understand the need for this secrecy agreement; therefore, as consideration for employment I agree that I will never divulge, publish, or reveal either by word or conduct, or by other means disclose to any unauthorized recipient without official written authorization by the Director of the FBI or his delegate, any information from the investigatory files of the FBI or any information relating to material contained in the files, or disclose any information or produce any material acquired as a part of the performance of my official duties or because of my official status. The burden is on me to determine, prior to disclosure, whether information may be disclosed and in this regard I agree to request approval of the Director of the FBI in each such instance by presenting the full text of my proposed disclosure in writing to the Director of the FBI at least thirty (30) days prior to disclosure. I understand that this agreement is not intended to apply to information which has been placed in the public domain or to prevent me from writing or speaking about the FBI but it is intended to prevent disclosure of information where disclosure would be contrary to law, regulation or public policy. I agree the Director of the FBI is in a better position than I to make that determination;
- (3) I agree that all information acquired by me in connection with my official duties with the FBI and all official material to which I have access remains the property of the United States of America, and I will surrender upon demand by the Director of the FBI or his delegate, or upon separation from the FBI, any material relating to such information or property in my possession;
- (4) That I understand unauthorized disclosure may be a violation of Federal law and prosecuted as a criminal offense and in addition to this agreement may be enforced by means of an injunction or other civil remedy.

I accept the above provisions as conditions for my employment and continued employment in the FBI. I agree to comply with these provisions both during my employment in the FBI and following termination of such employment.

(Signature)

(Type or print name)

Witnessed and accepted in behalf of the Director, FBI, on

, 19_____ , by _____

(Signature)

Code of
Federal Regulations

Judicial
Administration

28

PARTS 0 TO 42

Revised as of July 1, 1993

CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT

AS OF JULY 1, 1993

With Ancillaries

Published by
the Office of the Federal Register
National Archives and Records
Administration

as a Special Edition of
the Federal Register



Department of Justice**§ 17.144****§ 17.140 Heads of Offices, Boards, Divisions and Bureaus.**

Pursuant to Department Order 2600.2A, the heads of Offices, Boards, Divisions and Bureaus are responsible for effective implementation within their respective organizations of all Department security regulations and programs including the Department National Security Information Program. Heads of Offices, Boards, Divisions and Bureaus or their Security Programs Managers shall immediately report any violations of the provisions of this regulation to the Department Security Officer and the Office of Professional Responsibility.

§ 17.141 Security Programs Managers.

Pursuant to Paragraph 6.d., Department Order 2600.2A, the Security Programs Managers possess the delegated responsibility for the management and coordination of the Department's Security Program within their organization. In such a capacity, the Security Programs Managers are responsible for observing, enforcing, and implementing security regulations or procedures pertaining to the classification, declassification, safeguarding, handling, and storage of classified National Security Information. Further, Security Programs Managers are responsible for ensuring that all employees are given adequate instructions in the provisions of Department security regulations and procedures. Security Programs Managers will at least annually review the requirements for access to classified information as a part of the continuous need-to-know evaluation. For employees not having a valid need-to-know for classified information, the Security Programs Manager is to initiate a memorandum to administratively withdraw or reduce the level of access authorized.

§ 17.142 Security Officers.

Security Officers are responsible to their appointing authority for implementation and administration of the Document Security Program as delegated and assigned in accordance with Paragraph 6.e. of Department Order 2600.2A.

§ 17.143 Emergency planning.

Each Office, Board, Division or Bureau shall have current plans for the protection, removal, or destruction of classified material in case of fire, natural disaster, civil disturbance, or enemy action. These plans shall include the disposition of classified information located in the United States and in foreign countries.

§ 17.144 Employees.

(a) All persons granted access to classified information in the course of their employment at the Department of Justice are required to safeguard that information from unauthorized disclosure. This nondisclosure obligation is imposed by statutes, regulations, access agreements, and the fiduciary relationships of the persons who are entrusted with classified information in the performance of their duties. The nondisclosure obligation continues after Department of Justice employment terminates. In addition, each employee having access to classified information is personally responsible for becoming familiar with and adhering to the provisions of this regulation.

(b) All employees (except those of the Federal Bureau of Investigation which has its own regulations on this matter) with access to National Security Information are required to report to the Department Security Officer any close personal or social relationship with a foreign national, including foreign press representatives. This requirement does not include contacts or relationships developed within the scope of employment and known to the employee's supervisor. Any contacts with a foreign national which result in unofficial requests for job-related information or suspicion on the part of the employee with regard to the protection of National Security Information must also be reported.

(c) All employees of the Department (including contract employees and non-contractor personnel outside the Executive Branch) are to be aware of and comply with regulations concerning travel outside the continental United States. These regulations are summarized below:

§ 17.144

28 CFR Ch. I (7-1-93 Edition)

(1) Pursuant to the provisions of Director of Central Intelligence Directive 1/20 entitled, "Security Policy Concerning Travel and Assignment of Personnel with Access to Sensitive Compartmented Information," Department personnel who have access to Sensitive Compartmented Information are required to advise the Department Security Office in writing, of any travel, whether official or unofficial, outside of the continental United States. Upon the determination of the Department Security Officer, it may be necessary that such personnel be provided a Defensive Security Briefing, a formal advisory which alerts traveling personnel to the potential for harassment, provocation, or entrapment.

(2) Employees, contractor personnel and non-contractor personnel outside the Executive Branch having access to classified information under the control of the Department are also required to advise the Department Security Officer of any travel outside of the United States and its territories as soon as the travel plan is known. The Department Security Officer will determine whether a Defensive Security Briefing is necessary based upon the foreign countries to be visited, the sensitivity of the employee's current position and the level of access to classified information.

(3) All regular or contract employees of the Department traveling to Communist-controlled countries for Government business or for personal reasons must be provided a Defensive Security Briefing whether or not they have access to classified information. The Security Programs Manager for the employee's organization is to be advised by the employee in advance of travel to allow adequate time to receive the briefing required by the sensitivity or critical nature of the employee's current position. Should an employee have particular security concerns about travel to other foreign countries, he may request guidance from the Department Security Officer.

(d) All Department of Justice employees (including contract employees) granted access to classified information in the course of their employment

with the Department, shall be required to sign a nondisclosure agreement concerning the protection of national security information and a statement that they understand and shall conform to the provisions of this regulation.

(e) All employees with authorized access to Sensitive Compartmented Information shall be required to sign nondisclosure agreements containing a provision for prepublication review to assure deletion of Sensitive Compartmented Information and other classified information. Sensitive Compartmented Information is information that not only is classified for national security reasons as Top Secret, Secret, or Confidential, but also is subject to special access and handling requirements because it involves or derives from particularly sensitive intelligence sources and methods. The prepublication review provision will require that Department of Justice employees who are authorized access to Sensitive Compartmented Information submit certain material, described further in the agreement, to the Department prior to its publication to provide an opportunity for determining whether an unauthorized disclosure of Sensitive Compartmented Information or other classified information would occur as a consequence of its publication.

(f) It must be recognized at the outset that it is not possible to anticipate each and every question that may arise under these agreements. The Department will endeavor to respond, however, as quickly as possible to specific inquiries by individuals concerning whether specific materials require prepublication review. Persons subject to these requirements are invited to discuss their plans for public disclosures of information that may be subject to these obligations with authorized Department representatives at an early stage, or as soon as circumstances indicate these policies must be considered. Except as provided in paragraph (s) of this section for FBI personnel, all questions concerning these obligations should be addressed to the Counsel for Intelligence Policy, Department of Justice, 10th & Constitution Avenue, NW., Washington, DC

20530: the official views of the Department on whether specific materials require prepublication review may only be expressed by the Counsel for Intelligence Policy and persons should not act in reliance upon the views of other Department personnel.

(g) Prepublication review is required only as expressly provided for in a nondisclosure agreement. However, all persons who have had access to classified information have an obligation to avoid unauthorized disclosures of such information and are subject to enforcement actions if they disclose classified information in an unauthorized manner. Therefore, persons who have such access but are not otherwise required to submit to prepublication review under the terms of an employment or other nondisclosure agreement are encouraged to submit material for prepublication review voluntarily if they believe that such material may contain classified information. Where there is any doubt, individuals are urged to request prepublication review to avoid unauthorized disclosure and for their own protection.

(h) The nature and extent of the material that is required to be submitted for prepublication review under nondisclosure agreements is expressly provided for in those agreements. It should be clear, however, that such requirements do not extend to any materials that exclusively contain information lawfully obtained at a time when the author has no employment, contract, or other relationship with the U.S. Government or that contain information exclusively acquired outside the scope of employment.

(i) A person's obligation to submit material for prepublication review remains identical whether such person actually prepares the material or causes or assists another person, such as a ghost writer, spouse or friend, or editor in preparing the material. Material covered by a nondisclosure agreement requiring prepublication review must be submitted prior to discussing it with or showing it to a publisher, co-author, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a

breach of the obligation and exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information. See *Snepp v. United States*, 444 U.S. 507 (1980).

(j) The requirement to submit material for prepublication review is not limited to any particular type of material or disclosure. Written materials include not only book manuscripts but all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because fictional treatment may convey factual information, fiction material must also be submitted if it is based upon or reflects information required to be submitted for review under the terms of a nondisclosure agreement that includes an express prepublication review provision.

(k) Oral statements are also within the scope of a prepublication review requirement when based upon written materials, such as an outline of the statements to be made. There is no requirement to prepare written materials for review, however, unless there is reason to believe in advance that oral statements may contain Sensitive Compartmented Information or other information required to be submitted for review under the terms of nondisclosure agreement. Thus, a person may participate in an oral presentation where there is no opportunity for prior preparation (e.g., news interview, panel discussion) unless there is reason to believe in advance that such oral expression may contain Sensitive Compartmented Information or other information that must be submitted for review. This recognition of the problems inherent in oral representations does not, of course, exempt present or former employees from liability for any unauthorized disclosures of Sensitive Compartmented Information or classified information that may occur in the course of even extemporaneous oral expressions.

(l) Written materials that consist solely of personal views, opinions or judgments and do not contain or imply

any statement of fact that would fall within the terms of a nondisclosure agreement requiring prepublication review, are not subject to prepublication review requirements. For example, public speeches or publication of articles on such topics as proposed legislation or foreign policy do not require prepublication review as long as the material does not directly or implicitly constitute a factual statement that falls within the purview of a nondisclosure agreement requiring prepublication review. Of course, in some circumstances the expression of "opinion" may in fact disclose information that requires adherence to a prepublication review obligation required under a nondisclosure agreement. Again, consultation is urged to ensure conformity to this obligation.

(m) Obviously, the purposes of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons. In such cases, comparison of the material before and after the review would reveal to the unauthorized persons which items of information were considered to be classified and had been deleted at the Department's request. Consequently, the Department will consider a prepublication review obligation to have been breached in any case, whether or not the written material is subsequently submitted to the Department of prepublication review, where it already has been circulated to publishers or reviewers or has otherwise been made available to unauthorized persons. While the Department reserves the right to review such material for purposes of mitigating damage that may result from the disclosure of classified information, such action shall not prevent the U.S. Government and the Department from pursuing all appropriate remedies available under law as a consequence of the failure to submit the materials for prior review and any unauthorized disclosure of Sensitive Compartmented Information or classified information that may have occurred as a result.

(n) Material submitted for prepublication review will be reviewed solely for the purpose of identifying and preventing the disclosure of Sensitive

Compartmented Information and other classified information. This review will be conducted in an impartial manner without regard to whether the material is critical or favorable to the Department. No effort will be made to delete embarrassing or critical statements that are unclassified. Materials submitted for review will be disseminated to other persons or agencies only to the extent necessary to identify classified information.

(o) The Counsel for Intelligence Policy (or, in the case of FBI employees, the FBI's Office of Congressional and Public Affairs) will respond substantively to prepublication review requests within 30 working days of receipt of the submission. Priority shall be given to reviewing speeches, newspaper articles, and other materials that the author seeks to publish on an expedited basis. The Counsel's decisions may be appealed to the Deputy Attorney General, who will process appeals within 15 working days of receipt of the appeal. (See § 17.144(s)(3) concerning appeal procedures for FBI employees.) The Deputy Attorney General's decision is final and not subject to further administrative appeal. Persons who are dissatisfied with the final administrative decision may obtain judicial review either by filing an action for declaratory relief or by giving the Department notice of their intention to proceed despite the Department's requests for deletions of classified information, and a reasonable opportunity (30 working days) to file a civil action seeking a court order prohibiting disclosure. Of course, until any civil action is resolved, employees remain under an obligation not to disclose or publish information determined by the Government to be classified.

(p) Nothing in this subpart should be construed to alter or waive the Department's authority to seek any remedy available to it to prohibit or punish the unauthorized disclosure of classified information.

(q) A former Department of Justice employee who subsequently receives a security clearance or Sensitive Compartmented Information access approval from another department or agency is permitted to satisfy any obli-

Department of Justice**§ 17.146**

gation to the Department of Justice regarding prepublication review by making submissions to the department or agency that last granted the individual either a security clearance or Sensitive Compartmented Information access approval.

(r) The obligations of Department of Justice employees as described in this subpart also apply with equal force to contractors who are authorized by the Department to have access to Sensitive Compartmented Information or other classified information.

(s) The obligations of Department of Justice employees described in this subpart apply with equal force to employees of the Federal Bureau of Investigation with the following exceptions and provisos:

(1) Nothing in this subpart shall supersede or alter obligations assumed under the basic FBI employment agreement:

(2) FBI employees required to sign nondisclosure agreements containing a provision for prepublication review pursuant to this subpart shall submit materials for review to the Assistant Director, Office of Congressional and Public Affairs. Such individuals shall also submit questions as to whether specific materials require prepublication review under such agreements to that Office for resolution. Where such questions raise policy questions or concern significant issues of interpretation under such an agreement, the Assistant Director, Office of Congressional and Public Affairs, shall consult with the Counsel for Intelligence Policy prior to responding to the inquiry:

(3) Decisions of the Assistant Director, Office of Congressional and Public Affairs, concerning the deletion of classified information, may be appealed to the Director, Federal Bureau of Investigation, who will process appeals within 15 working days of receipt. Persons who are dissatisfied with the Director's decision may, at their option, appeal further to the Deputy Attorney General as provided in paragraph (o) of this section. Judicial review, as set forth in that paragraph, is available following final agency action in the form of a decision by the Director or, if the appeal proc-

ess in paragraph (o) of this section is pursued, the Deputy Attorney General.

Subpart L—Security Violations and Administrative Sanctions

§ 17.145 Violations subject to sanctions.

(a) Officers and employees of the Department and its contractors, grantees and consultants are subject to appropriate administrative sanctions if they:

(1) Knowingly, willfully or negligently and without authorization disclose to unauthorized persons information classified under Executive Order 12356 or prior orders or compromise classified information through negligence;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12356, its implementing directives or this regulation; or

(3) Knowingly and willfully violate any other provision of Executive Order 12356, any implementing directives or this regulation.

(b) Sanctions include but are not limited to warning notices, reprimands, termination of classification authority, suspension or termination of security clearance, and as permitted by law, suspension without pay, forfeiture of pay, removal or dismissal. Sanctions will be imposed upon any person subject to these regulations and responsible for a violation specified under this subpart as determined by the appropriate Department official upon recommendation by the Office of Professional Responsibility. In cases involving the compromise of classified information, the Attorney General, upon receiving a recommendation from the Office of Professional Responsibility, shall determine and impose appropriate sanctions.

§ 17.146 Reporting security violations.

Any person subject to these regulations who suspects or has knowledge of a violation pursuant to § 17.145 (including the known or suspected loss or compromise of National Security Information) shall promptly report and confirm in writing the circumstances.

PART I

SECTION I. ACTIVITIES AND STANDARDS OF CONDUCT

1-24

PREPUBLICATION REVIEW MATTERS

(1) This section provides background information regarding the FBI's prepublication review program and reemphasizes the responsibilities of all employees under the regulations governing the prepublication review process.

(2) The prepublication review requirement, which was designed to eliminate unauthorized disclosure of information from FBI files, of classified or sensitive information, and disclosures which would otherwise violate Federal statutes, regulations, or policy, has been in effect for many years. The FBI's Employment Agreement (FD-291) traditionally has been cited as the authority requiring employees, past and present, to submit, and FBI Headquarters to review, written material prior to publication. Prepublication review by the Office of Public Affairs (OPA), in certain instances, is specifically required under provisions of Title 28, Code of Federal Regulations (CFR), Section 17.144.

(3) All employees have an obligation to adhere to the following guidelines regarding any written product for which they seek publication:

(a) Current and former employees must submit their manuscripts to OPA for prepublication review prior to discussing it with, or showing it to, a publisher, co-author, ghost writer, or any other person who is not authorized to have access to it.

(b) All complete manuscripts, fiction or nonfiction, written by past or present employees, other than in their official capacity for inclusion in publications of the FBI, the Department of Justice or the Government Printing Office, must be furnished to OFA for a determination as to whether specific manuscripts require prepublication review.

(c) Manuscripts should be submitted by airtel from the author's Special Agent in Charge (SAC) or by memorandum from the Assistant Director of the author's FBIHQ division to the OPA. Such requests for prepublication review should include all pertinent information regarding the preparation/procseed publication of the manuscript, such as:

1. Whether the manuscript was prepared on Bureau time and if it was a previously approved FBI project.

2. Whether FBI records were accessed in connection with its preparation. Note all employees wishing to access FBI records in a capacity other than their official status must file a request with the Freedom of Information/Privacy Acts Section, [Information]Management Division, prior to accessing those records. (See MAOP, Part I, Section I-14(5).)

3. Whether the manuscript contains information obtained in the course of the author's official duties. (See MAOP, Part I, Section I-14(5).)

LAW OFFICES OF
PILLSBURY MADISON & SUTRO LLP

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MENLO PARK
CONTRACE COUNTY
SAN DIEGO
SAN JOSE
MCNEE RONG

SUITE 1200
1000 CONNECTICUT AVENUE, N.W.
WASHINGTON, D.C. 20036-5331
TELEPHONE (202) 637-0300
FACSIMILE (202) 296-7806

WRITER'S OFFICE AND
DIRECT DIAL NUMBER

(202) 463-2302

January 11, 1996

CONFIDENTIAL
BY HAND

Patricia Solley
Unit Chief, Research Communications Unit
Federal Bureau of Investigation
Office of Public and Congressional Affairs
Room 7350, J.E. Hoover Building
10th and Pennsylvania Avenue, N.W.
Washington, DC 20535

Dear Ms. Solley:

On behalf of our client, Mr. Gary W. Aldrich, we are today transmitting to you for review the enclosed manuscript consisting of approximately 178 pages. Mr. Aldrich, who is a former Federal Bureau of Investigation Special Agent, prepared his entire manuscript after his retirement from the FBI and without accessing FBI records. Although Mr. Aldrich is quite confident his manuscript does not disclose Sensitive Compartmented Information or other classified information, consistent with 28 C.F.R. § 17.44(n) and as a courtesy to his former employer for which he maintains great respect and affection, he is submitting the enclosed manuscript for FBI review prior to its publication for consideration of whether the manuscript discloses Sensitive Compartmented Information or other classified information the disclosure of which would damage our national security.

Since Mr. Aldrich wants to submit his manuscript for publication as soon as possible, we would appreciate your prompt review of the enclosed manuscript. While we understand that your review must be completed within 30 days of submission, we would appreciate the completion of your review sooner, if possible. In the event you or someone on your staff needs to discuss any issues related to your review of the manuscript, kindly call me at the telephone number noted above.

Finally, this manuscript has been submitted for review with the understanding that the FBI will maintain the confidentiality of the enclosed copyrighted manuscript, and that neither the fact

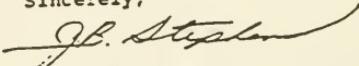
I am,

Patricia Solley
January 11, 1996
Page 2

of its preparation by Mr. Aldrich nor its contents will be disclosed except on a need to know basis consistent with the specific needs of the FBI's prepublication review process. Mr. Aldrich has a proprietary interest in the copyrighted manuscript which unnecessary disclosure during the FBI review process could damage.

Thank you in advance for your prompt and professional review of the enclosed manuscript. Please call if you have any questions during the course of your review. Kindly advise us at your earliest convenience when you have completed your review.

Sincerely,


Jay B. Stephens

Enc.

January 25, 1996

Mr. Jay B. Stephens
Law Offices of Pillsbury,
Madison, and Sutro
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

Dear Mr. Stephens:

Your January 11, 1996, letter on behalf of Mr. Gary W. Aldrich has been received.

The FBI currently is conducting its prepublication review of Mr. Aldrich's book manuscript, "Character Matters." When that review has been completed, I will notify you of the results.

In conducting prepublication review of manuscripts written by current and former FBI employees, the FBI adheres to provisions set forth in the Code of Federal Regulations (CFR) and the FBI Employment Agreement, copies of which are enclosed. Title 28, CFR, Section 17.144, addresses nondisclosure of Sensitive Compartmented and otherwise classified material. The Employment Agreement prohibits unauthorized disclosure of information from or relating to the investigatory files of the FBI, as well as information acquired through the performance of official duties or because of official FBI status, where that information would not be available to the public.

Title 28, CFR, Section 17.144 (i), states:

"Material covered by a nondisclosure agreement requiring prepublication review must be submitted prior to discussing it with or showing it to a publisher, coauthor, or any other person who is not authorized to have access to it. In this regard, it should be noted that a failure to submit such material for prepublication review constitutes a breach of the obligation and

Mr. Jay B. Stephens

exposes the author to remedial action even in cases where the published material does not actually contain Sensitive Compartmented Information or classified information."

In addition, Title 28, CFR, Section 17.144 (m) states:

"Obviously the purposes of prepublication review will be frustrated where the material in question already has been disseminated to unauthorized persons. In such cases, comparison of the material before and after the review would reveal to the unauthorized persons which items of information were considered to be classified and had been deleted at the Department's request. Consequently, the Department will consider a prepublication review obligation to have been breached in any case, whether or not the written material is subsequently submitted to the Department [for] prepublication review, where it already has been circulated to publishers or reviewers or has otherwise been made available to unauthorized persons."

Therefore, the FBI's Office of the General Counsel indicates that Mr. Aldrich already may be in violation of prepublication review regulations due to the fact that you were in possession of his manuscript, as well as the fact that the proposed book has been copyrighted. Please inform Mr. Aldrich that he is precluded from making any further disclosure of his manuscript until the FBI has concluded its review of the text.

According to Title 28, CFR, Section 17.144 (o): "[The FBI] will respond substantively to prepublication review requests within 30 working days of receipt of the submission." Please be assured that every effort is being made to complete the prepublication review of Mr. Aldrich's manuscript at the earliest possible date.

Sincerely yours,

Patricia G. Solley
Unit Chief
Office of Public and
Congressional Affairs

Enclosures (2)

February 21, 1996

Mr. Jay B. Stephens
Law Offices of Pillsbury,
Madison, and Sutro
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

Dear Mr. Stephens:

This will supplement my previous letter of January 25, 1996.

The FBI has completed its prepublication review of "Character Matters," the book manuscript written by your client Gary W. Aldrich. Based upon that review, it was determined that some information included in the text violates provisions of the FBI Employment Agreement and, therefore, requires revision or deletion prior to submitting the manuscript to prospective publishers.

A separate letter currently is being prepared which outlines all required modifications to Mr. Aldrich's book. This letter, as well as Mr. Aldrich's original manuscript, will be provided to you as soon as possible.

Sincerely yours,

Patricia G. Solley
Unit Chief
Office of Public and
Congressional Affairs

February 22, 1996

BY HAND DELIVERY

Jay B. Stephens, Esq.
Law Offices of Pillsbury,
Madison, and Sutro
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

Dear Mr. Stephens:

This letter is intended to supplement and amplify the letter sent to you yesterday by our Office of Public and Congressional Affairs regarding the prepublication review of the manuscript entitled, "Character Matters" written by your client, Mr. Gary W. Aldrich, a former FBI Special Agent. Publication of significant portions of the manuscript is objectionable. We are willing to work with Mr. Aldrich in an effort to revise or eliminate these segments but we will consider any publication or further dissemination of this work in its current form to be a direct breach of Mr. Aldrich's employment agreement with the Bureau,¹ among other things.

As you know, Mr. Aldrich's manuscript primarily concerns his observations and activities while assigned to the White House during the first half of the Clinton Administration. In addition to containing Mr. Aldrich's personal opinions and views, the manuscript also includes considerable information Mr. Aldrich learned during individual background investigations conducted in the course of his official duties. He also discusses the substance of many conversations in which he engaged while pursuing those duties, as well as related conclusions and observations. Publication of this information is objectionable.

Indeed, in some cases, Mr. Aldrich summarizes his findings, in others he quotes directly from conversations he had with background investigation subjects. For example, his detailed rendition of his interview of a subject at pages 114-

Jay B. Stephens, Esq.

116, contains direct quotes from the subject, as does his discussion of another interview at pages 116-117. Similarly, Mr. Aldrich's recitation of information, at pages 162-163, regarding a particular staff member was "learned" during the staff member's background investigation.² In addition, Mr. Aldrich's description of his discussion with a senior White House staff member regarding his concerns about the White House security program, at pages 144-149 of the manuscript, is simply a description of an official transaction in which Mr. Aldrich would not have been permitted to engage if he had not been assigned as an FBI Special Agent to the White House. His discussion with other administration officials reported at pages 155-158 and pages 61-64, on the same subject, are other examples. Many of Mr. Aldrich's stated conclusions derive directly from the contents of the background investigations that he conducted or which he saw in the performance of his official duties.

That Mr. Aldrich is well aware of the confidentiality of this material is evident throughout the manuscript. Mr. Aldrich repeatedly acknowledges that the Privacy Act prevents him from disclosing the particulars of what he learned during the course of an investigation. For example, before discussing a senior staff member's background investigation, he states, at page 65 of the manuscript, that "Privacy Act provisions forbid me from telling you everything about my participation in the background investigation of [the senior staff member]."³ Similarly, Mr. Aldrich indirectly acknowledges the impropriety of providing background investigation information to administration officials on page 144 of the manuscript: "I told [a senior administration official] . . . I was not comfortable giving him information about any specific staff member"

Mr. Aldrich's concern is well founded since the explicit terms of his employment agreement with the Bureau require him to obtain advance FBI approval before divulging any information contained in FBI files or acquired during the performance of his official duties. Since Mr. Aldrich's entire

² Occasionally, Mr. Aldrich alludes to the "public source" nature of the information that he discloses. For example, on page 45 of the manuscript, he describes an interview he conducted and asserts that "[a]ll of the information relative to [the interviewee's] education and experience was released to the public in the normal press release information provided at the time of the announcement by the President that [the interviewee] was to [receive a certain appointment by the President]. I am not giving away any information from [the interviewee's] FBI file here." The burden is on Mr. Aldrich at this stage of the FBI's prepublication review to clearly show the public source of such information by providing specific citations.

³ Mr. Aldrich says virtually the same thing on p. 54 of the manuscript: "The Privacy Act does not permit me to disclose what I asked or what [the interviewee] answered."

Jay B. Stephens, Esq.

text is replete with such information, significant revisions will be required to delete all such material.

If an agent stationed in this most sensitive of positions is permitted to divulge the intricacies of his official encounters and information that he acquired exclusively through performance of his official duties, then the ability of any subsequent agent to discharge effectively his or her responsibilities will be gravely impaired. Since maintenance of that position is critical to the security of the President and the preservation of some of our Nation's most sensitive and highly classified secrets, we will not permit that to happen.

We must, consequently, hold Mr. Aldrich to the strict terms of his employment agreement by refusing to authorize publication of the manuscript in its current form. We trust that Mr. Aldrich understands our concerns and look forward to working with him.

Howard M. Shapiro
General Counsel

Enclosures (5)

March 5, 1996

Jay B. Stephens, Esq.
Law Offices of Pillsbury
Madison & Sutro, LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

Dear Mr. Stephens:

This letter will confirm that at our meeting yesterday afternoon regarding the manuscript entitled "Character Matters," written by your client, former FBI Special Agent Gary Aldrich, we provided you with a copy of the manuscript marked to indicate those passages that the FBI finds objectionable. As we discussed, the majority of our objections relate to instances in which Mr. Aldrich discloses, directly or indirectly, information from FBI background investigations or where Mr. Aldrich discloses official, confidential information regarding White House security. As we indicated, some of our objections would be withdrawn if Mr. Aldrich is able to demonstrate the public source of the information in those passages. If, however, these passages are based on non-public information that Mr. Aldrich gleaned while conducting official FBI business (i.e., FBI background investigations of White House personnel), we must continue to insist on their redaction.

We trust that, as Mr. Aldrich's counsel in this matter, you will continue to maintain the confidentiality of the manuscript. We recognize that we covered several issues (and many pages) during the meeting and encourage you to call us with any questions either you or your client may have prior to supplying us with a revised manuscript. Ms. Osofsky is reachable at 324-8067, and Ms. Bradshaw at 324-4522. I can be reached at 324-6829.

Sincerely,

Howard M. Shapiro
General Counsel

LAW OFFICES OF
PILLSBURY MADISON & SUTRO LLP

SAN FRANCISCO
 LOS ANGELES
 SAN JOSE
 SAN DIEGO

WRITER'S OFFICE AND
 DIRECT DIAL NUMBER

(202) 463-2302

SUITE 1200
 1050 CONNECTICUT AVENUE, N.W.
 WASHINGTON, D.C. 20036
 TELEPHONE (202) 687-0300
 FACSIMILE (202) 298-7605

ORANGE COUNTY
 SACRAMENTO
 MENLO PARK
 TOKYO
 HONG KONG
 NEW YORK

March 15, 1996

HAND DELIVER

Howard M. Shapiro, Esq.
 General Counsel
 Federal Bureau of Investigation
 J. Edgar Hoover Building
 10th and Pennsylvania Avenue, N.W.
 Washington, D.C. 20535

Re: Aldrich Manuscript

Dear Mr. Shapiro:

I appreciated the opportunity to meet with you, Ms. Osofsky, and Ms. Bradshaw on March 4 regarding the manuscript prepared by our client, former Special Agent Gary Aldrich. I appreciated the time you took to review Mr. Aldrich's draft manuscript and to share with me the specific concerns the FBI has about the draft manuscript as well as your suggestions for modifications to the manuscript. Following our meeting, I discussed with Mr. Aldrich the issues you had raised regarding the draft manuscript, and provided to him the "marked-up" copy you had provided to me with the FBI's suggested edits.

Mr. Aldrich has now made a number of modifications to the draft manuscript in an effort to address the concerns you raised. Enclosed are approximately twenty revised and edited pages of the draft manuscript. Each of the pages is numbered at the bottom to reflect that it is a revised page which should be substituted for the corresponding page in the copy of the draft manuscript which you previously reviewed and "marked up."

In making these modifications, Mr. Aldrich has addressed a number of issues raised by you. In particular, he has made every effort to ensure the manuscript contains no disclosures of information protected by the Privacy Act. He has taken great care not to disclose any derogatory information for a specifically identified individual where the information is derived from a background investigation report which is part of an FBI record.

123405

Howard M. Shapiro, Esq.
March 15, 1996
Page 2

To the extent there are any references in the manuscript to background investigations of identified individuals, the material discussed was never made part of any official FBI record; consists of personal impressions not derived from any FBI report or record; or has previously been publicly disclosed or is otherwise generally available public information. In a limited number of cases where Mr. Aldrich discusses specific background investigative information, he notes that he has created a fictitious identity, and provides an "amalgam" of information not derived from any specifically identified individual. Finally, other manuscript references to background-related information are simply aggregate summary information derived from hundreds of background investigations, which do not disclose FBI record information regarding a specifically identified or identifiable individual. Consequently, as modified the draft manuscript should not entail any Privacy Act concerns. In the event you have specific information from FBI records to the contrary, kindly advise us.

Mr. Aldrich has also modified a couple specific references regarding a communications system about which you expressed concern because of national security implications (pp. 97-98). Any remaining references in this regard are based on general information which Mr. Aldrich acquired after his retirement from the FBI.

After reviewing the edited manuscript pages, I believe you will conclude there is no remaining basis for the FBI to object to Mr. Aldrich's publication of his manuscript. As we previously discussed, the manuscript does not adversely impact any ongoing criminal investigations. The manuscript does not disclose any specific objectionable national security information. The manuscript does not involve disclosure of any information protected by the Privacy Act. You previously advised that you did not object to Mr. Aldrich's general observations regarding the staff and working environment as well as his related opinions.

The only two general areas of concern which you raised regarding the manuscript which are not specifically addressed in the edited draft are the following: 1) Mr. Aldrich's comments and views regarding the shortcomings of the personnel security program and the failures of the staff to address those problems; and 2) general references to background investigations, including commentary concerning aggregate summary background investigation information.

We request that you reconsider your views regarding these two general issues. While the FBI might prefer that there be no public examination of personnel security program deficiencies or

Howard M. Shapiro, Esq.
March 15, 1996
Page 3

any criticism of an agency's failure to address or correct such problems, a public discussion or examination of such matters could hardly constitute a threat to national security. The argument that public comment concerning the problems in personnel clearance procedures and standards at a federal agency might demonstrate national security vulnerabilities, and thereby invite a counter-intelligence action adversely impacting national security, is hardly compelling in the context of Mr. Aldrich's manuscript. The objection seems to suggest that for national security reasons it is better to have a broken and defective personnel background security process than to correct the problem through public scrutiny. The same reasoning would suggest that there could never be a prosecution for espionage, for example, because the fact of the prosecution would disclose a vulnerability in protecting national security information. Moreover, Congress could presumably engage in public hearings regarding the failure of the personnel background security program at a federal agency without jeopardizing national security.

We suggest that a careful examination of the comments and criticisms made in the Aldrich manuscript regarding the breakdown of the personnel security process would lead you to the conclusion that they are thoughtful reflections designed to correct a problem, and are not objectionable on national security grounds. While the FBI might not like Mr. Aldrich's critique of the personnel security process and program, concern about national security does not provide a plausible basis on which to silence his comments. In any event, we submit Mr. Aldrich's general comments regarding the flawed personnel security program do not rise to the level of constituting any specific threat to national security, nor do they constitute any disclosure of actual national security information.

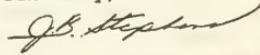
With respect to the general references in the manuscript to background investigations and the comments on summary, aggregate background information to which you previously expressed objection, we note that Mr. Aldrich's comments are designed to enhance respect for the background investigative process and are made with careful attention to individual privacy issues. It is public knowledge and federal policy that federal employees are subject to background investigations; indeed, background investigations are a condition of federal appointments. Disclosure of that fact and discussion of efforts to circumvent such requirements hardly diminish the government's ability to conduct such investigations. Blocking scrutiny of the problems the Aldrich manuscript identifies simply perpetuates a charade; it is based on the flawed reasoning that it is better to ignore non-compliance with and circumvention of federal employment requirements than to disclose such problems, because ironically

Howard M. Shapiro, Esq.
March 15, 1996
Page 4

such disclosure would engender non-compliance and circumvention. Mr. Aldrich's efforts to scrutinize background investigation problems can only assist the government in accomplishing its legitimate objective of conducting meaningful background investigations and help ensure that applicants for federal appointment do not make a mockery of the process.

In conclusion, we invite your attention to the modifications Mr. Aldrich has made to the manuscript in an effort to respond to your concerns. With respect to the general policy concerns you have raised, we request that you reflect further on those issues and reconsider the objections you have raised. We reiterate Mr. Aldrich's genuine concern about the issues he has raised and underscore the efforts he has made to address these concerns in a thoughtful responsible manner. Those views reflect his training as an FBI agent and his great respect for his former agency. We request that you review his edited manuscript promptly, reconsider the previous general policy concerns you expressed, and approve publication of his manuscript.

Sincerely,



Jay B. Stephens

Encs.

March 25, 1996

Jay B. Stephens, Esq.
Law Offices of Pillsbury
Madison & Sutro, LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

RE: PREPUBLICATION REVIEW OF MANUSCRIPT
WRITTEN BY FORMER SPECIAL AGENT GARY ALDRICH

Dear Mr. Stephens:

Thank you for your letter dated March 15, 1996, enclosing twenty (20) revised pages of Mr. Aldrich's manuscript. We have compared Mr. Aldrich's revisions to the revisions requested by the FBI during a meeting with you on March 4, 1996. While Mr. Aldrich has made minor modifications to the text, he continues to include in his manuscript, in a variety of forms (as discussed more specifically below), non-public information he learned while conducting background investigations while employed as a Special Agent with the FBI. Unless Mr. Aldrich either redacts or cites the public sources of the information "bracketed" by the FBI on the March 4 draft delivered to you, we must continue to withhold FBI authorization to publish the manuscript.

First, Mr. Aldrich's revised manuscript continues to include detailed narratives of his interviews of several background investigation subjects such as Mr. Watkins at p. 11, Ms. Albright at pp. 45-46, and the two fictitiously-named individuals discussed at pp. 113-18. Although Mr. Aldrich made absolutely no revisions with respect to his discussions of his background investigations of the first two individuals, his revisions with respect to his investigations of the latter two are perplexing, to say the least. Essentially, Mr. Aldrich has replaced the fictitious names he originally ascribed to these two individuals with new fictitious names and has added a paragraph or two claiming that the interviewees are "composites." He has then included in his revised draft the entire narrative originally disclosed in his first draft.

Jay B. Stephens, Esq.

For clarification purposes, the FBI's initial objection to the disclosure of this information was not that Mr. Aldrich originally chose fictitious names that were unacceptable to the FBI or that the narratives were not preceded by a disclaimer indicating that the interviewee was a "composite." The objection was, and is, that Mr. Aldrich discloses non-public information which he learned solely during the course of conducting FBI background investigations. Disclosure of this information will adversely affect the FBI's ability to conduct meaningful background investigations in the future and will seriously harm the FBI's legitimate interest in maintaining the appearance of confidentiality in these matters which is essential to its effective operation. The information either must be redacted or Mr. Aldrich must identify for us the public source from which he obtained the information.

Mr. Aldrich apparently understands the FBI's position in this regard since he redacted, at p. 55, his narrative regarding an interview of Ms. Varney while investigating Mr. Watkins. Moreover, at p. 68, Mr. Aldrich acknowledges that he "cannot discuss if Foster did or did not reveal his alleged depression when [Aldrich] interviewed him." Mr. Aldrich's inclusion of and failure to redact other similar background information is puzzling.¹

Second, Mr. Aldrich has made no attempt to remove his general statements which reveal information he learned during the course of FBI background investigations. Examples of such statements may be found at lines 14-16 on page 52, lines 36-38 on page 62, lines 35-40 on page 73, lines 19-20 on page 74, lines 34-35 on page 90, and lines 9-21 on page 141. Unless these statements are based on information in the public domain, they must be redacted.

Third, although your letter alludes to this issue, Mr. Aldrich has not clarified in his manuscript whether certain of

¹ Another one of Mr. Aldrich's revisions is similarly confusing. At pp. 67-68, Mr. Aldrich makes his point by posing a series of "hypothetical" questions. The FBI objected to the excerpt because it is apparent from the segment that Mr. Aldrich is attempting to indirectly disclose (through his "questions") information he knows as a result of his background investigation of a high-level White House official. Following the FBI's objection, Mr. Aldrich revised the beginning of the passage to state that he is surprised that nobody has asked certain questions about what was contained in the background investigation "so I will, now that I am retired." (Emphasis supplied.) The inclusion of this new language appears to suggest that Mr. Aldrich believes that because he is retired he can indirectly disclose information that he was precluded from directly or indirectly disclosing prior to his retirement. The FBI's employment agreement is clear, however, that Mr. Aldrich's non-disclosure obligations continue with the same force and effect even after he has retired.

Jay B. Stephens, Esq.

his conclusory statements and statements of opinion are based directly on information he gleaned during the course of conducting background investigations or are based on other sources such as his general observations regarding the White House staff and working environment. For instance, at p. 121, Mr. Aldrich states that "Everyday brought some new surprise, some new shock." If Mr. Aldrich is referring simply to the clothes and accessories worn by White House staff members, we have no objection. If, however, the comment refers to what Mr. Aldrich and his colleagues at the FBI learned while conducting background investigations, we must object. Similarly, where Mr. Aldrich states, on p. 125, that "they [White House staffers] were dishonest," it is unclear from the text whether he is referring to instances in which White House staffers consumed their drinks while strolling through the cafeteria and then refilled them before paying for them or drawing on information he learned during his background investigations of the staffers. If the context of the passage is clarified to suggest the former, we have no objection; however, we do object to disclosure of information in the latter context. It is incumbent upon Mr. Aldrich to clarify such statements. Significantly, many of the objectionable security-related passages similarly fall into this category.

Fourth, as indicated above, it is unclear whether many of the security-related passages with respect to which the FBI has asserted an objection, are expressions of opinion based on information Mr. Aldrich learned as a result of FBI background investigations or are expressions of opinion based on information in the public domain. If Mr. Aldrich's comments about White House security are based on non-public information he gleaned in the course of his official duties, our objection is twofold: (1) to the extent the comments indirectly reveal non-public background investigation information about White House staffers, we object to the indirect disclosure of such information because it will adversely affect public confidence in the FBI's ability to maintain confidentiality with respect to such investigations and harm the FBI's ability to conduct effective background investigations in the future; and (2) to the extent the comments are based on non-public information about the state of White House security in general, we object because such disclosures in and of themselves impair White House security and place White House employees in a vulnerable position.²

² Interestingly, based on the FBI's security-related objection to information contained on pp. 97-98, Mr. Aldrich revised his manuscript to delete certain information regarding a phone system at the White House. The same concerns which required redaction of that information require redaction of the other security-related passages if such passages are not based on information in the public domain.

Jay B. Stephens, Esq.

Fifth, Mr. Aldrich's manuscript continues to contain discussions of the substance of official conversations Mr. Aldrich engaged in while he was an FBI Agent at the White House, as well as discussions of the content of official memoranda and documents he reviewed in connection with his employment without citing the public source of such information. The same is true with regard to Mr. Aldrich's references to White House passes -- the public source of this information, if any, should be noted in the text. The burden of showing that the information Mr. Aldrich seeks to disclose is in the public domain is on Mr. Aldrich. See McGeehee v. Casey, 718 F.2d 1137, 1141 n.9 (D.C. Cir. 1983).

In sum, we request that Mr. Aldrich reconsider the FBI's objections as relayed to you during our March 4, 1996 meeting and as further discussed herein, and revise his manuscript to address these objections. Until such time, we cannot authorize publication of the manuscript as revised by the pages enclosed with your March 15, 1996 letter. We look forward to Mr. Aldrich's compliance and encourage you to call us with any questions either you or your client may have regarding the manuscript.

Sincerely,

Howard M. Shapiro
General Counsel

LAW OFFICES OF
PILLSBURY, MADISON & SUTRO LLP
 SAN FRANCISCO
 LOS ANGELES
 SAN JOSE
 SAN DIEGO
 WRITER'S OFFICE AND
 DIRECT DIAL NUMBER

SUITE 1200
 1050 CONNECTICUT AVENUE, N.W.
 WASHINGTON, D.C. 20036
 TELEPHONE (202) 667-0300
 FACSIMILE (202) 296-7605

ORANGE COUNTY
 SACRAMENTO
 MENLO PARK
 TOKYO
 HONG KONG
 NEW YORK

(202) 463-2302

April 30, 1996

BY HAND DELIVERY

Howard M. Shapiro, Esq.
 General Counsel
 Federal Bureau of Investigation
 J. Edgar Hoover Building
 10th and Pennsylvania Avenue, N.W.
 Washington, DC 20535

Re: Aldrich Manuscript

Dear Mr. Shapiro:

Enclosed is a revised copy of the manuscript written by former Special Agent Gary W. Aldrich which previously was submitted to the FBI on January 11, 1996 for prepublication review. The revised manuscript consists of 196 pages. After Mr. Aldrich's manuscript was submitted to the FBI for review on January 11, you advised us by correspondence dated February 22, 1996 that a number of changes would need to be made in the manuscript before the FBI would clear it. Subsequently, we met to discuss your concerns. After our meeting, Mr. Aldrich revised his manuscript in an effort to address the concerns you had raised; he submitted revised portions of the manuscript for FBI review on March 15. On March 25 you advised Mr. Aldrich by letter that the FBI continued to object to parts of the manuscript.

Since your March 25 letter, Mr. Aldrich has spent considerable time and effort to revise his manuscript to address the concerns the FBI has expressed about the manuscript. You will note that Mr. Aldrich has made significant changes in his manuscript. He has modified or deleted substantial parts of the manuscript, and he has also included additional material. The additional material he has included is primarily publicly sourced material or was developed exclusively since Mr. Aldrich retired from the FBI.

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Howard M. Shapiro, Esq.
April 30, 1996
Page 2

We believe a thoughtful and careful review of Mr. Aldrich's manuscript would lead you to conclude that there are no legitimate FBI interests seriously jeopardized by publication of this manuscript.

First, the manuscript contains no disclosure of information protected by the Privacy Act. The manuscript does not disclose any derogatory information regarding a specifically identified individual where such information was derived from an FBI background investigative report which is part of an FBI record. We addressed the Privacy Act issues at length in our March 15 letter. At that time we invited you to identify any specific Privacy Act issues of which the FBI might be aware because of your access to FBI records. Although your March 25 letter expressed continuing concerns about the general discussion of background investigation information, you did not identify any specific Privacy Act concerns. We believe the revised manuscript entails no Privacy Act issues.

Second, the manuscript contains no material that adversely affects any ongoing criminal investigations. When we met on March 4 to review the FBI's concerns about the draft manuscript, you agreed that the manuscript did not disclose any such information. The revised manuscript does not disclose any sensitive law enforcement information related to any ongoing investigations.

Third, the manuscript does not disclose any national security information. It does not disclose any classified information, nor does it reveal any intelligence sources or methods. The revised manuscript simply does not disclose any identifiable traditional national security information.

The revised manuscript also seeks to address the concerns raised in your March 25 letter. A number of the passages you cited have been significantly revised or removed altogether. The inclusion of a fictitious "composite" or "amalgam" background investigation, identified as such as an example in the manuscript, could hardly have any serious impact on the FBI's ability to do its lawful work. Similarly, Mr. Aldrich's opinions as expressed in the manuscript, whether based on public information or on his experiences as an agent, hardly seem an appropriate concern for the FBI, and in any event could not seriously impact negatively on the FBI's lawful responsibilities. Moreover, an agent's opinions are not an appropriate basis to block prepublication clearance.

To the extent the manuscript comments on the deficiencies of the White House personnel security process and the FBI's role

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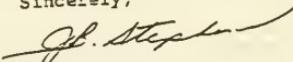
Howard M. Shapiro, Esq.
April 30, 1996
Page 3

in those problems, such legitimate responsible criticism simply cannot be characterized as damaging national security because it places White House employees in a vulnerable position; such a characterization is simply a bootstrap argument without foundation. Finally, to the extent the revised manuscript comments on the deficiencies in the White House background investigation process, such comments do not seriously undermine the FBI's ability to do its job. On the contrary, such legitimate comment could only improve the process by stripping away false appearances that in fact have contributed to the FBI's inability to meet its responsibility and have masked the real problems.

In conclusion, we submit that the enclosed revised manuscript is a professional, responsible treatment of a serious public policy issue which deserves public scrutiny. Mr. Aldrich has made every effort to address legitimate concerns the FBI may have had about disclosure of this material. The enclosed revised manuscript also demonstrates Mr. Aldrich's sincere efforts to address all legitimate concerns the FBI may have. We respectfully request that you review this revised manuscript in the spirit in which it has been written and submitted for prepublication review. We submit, that in the context of the myriad of books which have been written by former FBI Special Agents, any further effort to block or delay the publication of Mr. Aldrich's manuscript could only be seen as a selective effort unjustifiably and unreasonably to silence him in an effort to protect the FBI and the White House from potentially embarrassing criticism, and not because of any justifiable law enforcement reasons.

We trust that you will concur that Mr. Aldrich's revised manuscript is a responsible treatment of an important public policy issue which does not pose any serious damage to the FBI's legitimate law enforcement functions. Accordingly, we request that you do not interpose any further objection to its publication. In the unlikely event you continue to object to the manuscript's publication, kindly advise us if we may appeal your decision and to whom.

Sincerely,



Jay B. Stephens

Enc.

:1111064-

May 9, 1996

Mr. Jay B. Stephens
Pillsbury Madison & Sutro LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D. C. 20036

Re: Aldrich Manuscript

Dear Mr. Stephens:

My staff and I are reviewing the revised manuscript that you submitted on April 30, 1996. We will advise you as soon as we have completed our review. We hope to complete this review during the upcoming week.

If you have any questions regarding this matter, do not hesitate to ask.

Very truly yours,

Howard M. Shapiro
General Counsel

1 - Mr. H. M. Shapiro
1 - Mr. J. E. Collingwood
1 - Mr. T. A. Kelley
1 - Mrs. D. D. Sauer
1 - Ms. L. K. Osofsky

LMO/imt (6)

May 20, 1996

Jay B. Stephens, Esq.
Law Offices of Pillsbury
Madison & Sutro, LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

RE: PREPUBLICATION REVIEW OF MANUSCRIPT
WRITTEN BY FORMER SPECIAL AGENT GARY ALDRICH

Dear Mr. Stephens:

Thank you for your letter dated April 30, 1996, enclosing a revised copy of Mr. Aldrich's manuscript imparting his experiences as an FBI Special Agent assigned to the White House. We have reviewed the entire manuscript and have identified six (6) passages which appear to need redaction and two (2) others that may simply require clarification. Although Mr. Aldrich has made changes in the manuscript, we are still concerned about those passages in which he discloses non-public information that he learned while conducting background investigations for the FBI. For this reason, we withhold FBI authorization to publish the manuscript as it is currently written.

To assist Mr. Aldrich with his revisions, we have enclosed a marked copy of the manuscript indicating those passages which the FBI requires that Mr. Aldrich either redact or identify the public sources of the information. Specifically, the passages marked on pages 28, 29, 33, 84-86, 100-105 and 164 appear to require redaction, unless Mr. Aldrich identifies the public sources of these passages and drafts his manuscript in a manner that does not appear to divulge information obtained through interviews he conducted as part of the FBI Special Inquiry (SPIN) Unit.

Mr. Jay B. Stephens, Esq.

The passages marked on pages 46 and 172 simply appear to need clarification. On page 46, for example, if Mr. Aldrich deleted references to "SPINs" as evidence for his statements about character flaws and drug use, the passage would no longer be objectionable. On page 172, Mr. Aldrich appears to be describing a real person. If this is not the case, he could include a footnote explaining that "Debbie Shiff" is not an actual person but, rather, typifies people he saw working at the White House.

Our primary purpose in seeking the specified redactions and clarifications is to permit the SPIN Unit to continue its vital function of securing the honest and uninhibited responses of those persons who can provide information relevant to background investigations. Accordingly, only those passages that would in the future chill forthright and candid responses during background investigations have been identified for revision and redaction. As we have emphasized throughout our review process, if members of the public believe that the information they disclose to FBI Agents conducting background investigations will be publicly aired in a book such as Mr. Aldrich's, they may be unwilling to speak openly and frankly with FBI Agents. Because their cooperation cannot be compelled, the FBI's ability to fulfill its lawful responsibilities in conducting meaningful interviews will be adversely affected by Mr. Aldrich's public revelations. We cannot allow this to occur.

We look forward to Mr. Aldrich's compliance and encourage you to call us with any questions either you or your client may have regarding the manuscript.

Sincerely,

Howard M. Shapiro
General Counsel

Enclosure

LAW OFFICES OF
PILLSBURY MADISON & SUTRO LLP
 SUITE 1200
 1050 CONNECTICUT AVENUE, N.W.
 WASHINGTON, D.C. 20036
 TELEPHONE (202) 667-0300
 FACSIMILE (202) 296-7605

SAN FRANCISCO
 LOS ANGELES
 SAN JOSE
 SAN DIEGO
 WRITER'S OFFICE AND
 DIRECT DIAL NUMBER

ORANGE COUNTY
 SACRAMENTO
 MENLO PARK
 TOKYO
 HONG KONG
 NEW YORK

(202) 463-2302

June 4, 1996

Hand Delivered

Howard M. Shapiro
 General Counsel
 Federal Bureau of Investigation
 J. Edgar Hoover Building
 10th and Pennsylvania Avenue, NW
 Washington, DC 20535

Re: Prepublication Review of Aldrich Manuscript

Dear Mr. Shapiro:

Thank you for your letter of May 20, 1996 regarding the revised Aldrich manuscript which Mr. Aldrich provided to you on April 30. We appreciate your taking time to review the substantially revised manuscript and to provide comments on a limited number of passages. Since Mr. Aldrich first submitted his draft manuscript to the FBI for prepublication review on January 13, the review process has been a lengthy and time-consuming one for Mr. Aldrich as he has tried to address the principal concerns expressed by the FBI. As we have noted before, Mr. Aldrich has great respect for the FBI, and has made a diligent effort over the past several months to address the concerns you have raised about his manuscript. In that regard, we are pleased that your May 20 letter identifies only a limited number of passages which raise concern about the FBI's ability to protect its interests in conducting SPIN background investigations.

I have reviewed with Mr. Aldrich your May 20 letter and your suggested manuscript changes. I have also explored with him ways of addressing your remaining concerns regarding the eight passages in the manuscript which you have identified. Mr. Aldrich understands the FBI's interest in protecting the SPIN process. He recognizes the value of an effective SPIN process in helping to ensure that qualified people serve in the Executive Branch. Mr. Aldrich is also cognizant of the importance of not disclosing sensitive background investigative information about identified individuals. In that spirit, he has undertaken to address the remaining concerns you have identified.

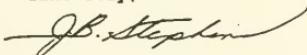
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Howard M. Shapiro
June 4, 1996
Page 2

He has made a number of additional changes to the manuscript. Where material in the passages you identified is publicly sourced information, he has sought to identify that fact more clearly in the text. In other passages, as suggested by your letter, he has removed references to the SPIN process to avoid unnecessarily suggesting that the information is based on a SPIN investigation which he had conducted. In other marked passages, he has tried to emphasize more clearly that the material discussed does not reflect an actual SPIN background investigation which he had conducted, but constitutes an effort to develop a composite example of the kinds of character issues extant at the agency. In a couple of instances, he could not significantly modify identified passages without undermining the central thesis of his manuscript, but he did make an effort to mute any related criticism of the FBI and to ensure that no SPIN background information was disclosed about identified individuals. Finally, as suggested in your letter, he has removed the identifying references to the named individual noted in your letter and has otherwise modified the passage to avoid identifying personal characteristics; in addition, please note that the information in this passage was not derived from a SPIN investigation conducted by Mr. Aldrich. In short, Mr. Aldrich has undertaken a good faith effort to address the FBI's remaining concerns about his manuscript which were outlined in your recent letter.

We appreciate the time you and your staff have taken over the past five months to review and comment on Mr. Aldrich's manuscript. We trust you understand that Mr. Aldrich has genuinely tried to address the core issues of concern which have been expressed by the FBI. Mr. Aldrich understands that an effective SPIN process is important to the FBI and to the Executive Branch, and accordingly has made a significant good faith effort to address the concerns you have raised. Indeed, his manuscript was predicated on the premise that an effective personnel security process is important to our government and country, and it was motivated by a sincere interest in ensuring that an effective personnel security system be in operation to protect one of our most important agencies of government. We appreciate your cooperation during this lengthy prepublication clearance process.

Sincerely,



Jay B. Stephens

June 4, 1996

VIA COURIER

Mr. Jay B. Stephens
Law Offices of Pillsbury
Madison & Sutro LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D. C. 20036

Re: Prepublication Review of Aldrich Manuscript

Dear Mr. Stephens:

I just received a copy of the letter you sent to Mr. Shapiro describing additional changes that Mr. Aldrich made to his manuscript. Mr. Shapiro did not, however, receive a revised version of the manuscript. The Office of the General Counsel designated eight (8) passages for revision and it is difficult to tell, from your letter, which passages Mr. Aldrich changed and which he felt "he could not significantly modify."

I would appreciate your forwarding a revised version of the manuscript so that we can complete our prepublication review.

Very truly yours,

Lisa Kate Osofsky
Deputy General Counsel
General Counsel

LAW OFFICES OF
PILLSBURY MADISON & SUTRO LLP

SAN FRANCISCO
 LOS ANGELES
 SAN JOSE
 SAN DIEGO

WRITER'S OFFICE AND
 DIRECT DIAL NUMBER

(202) 463-2302

SUITE 1200
 1050 CONNECTICUT AVENUE, N.W.
 WASHINGTON, D. C. 20036
 TELEPHONE (202) 887-0300
 FACSIMILE (202) 288-7805

ORANGE COUNTY
 SACRAMENTO
 MCLEOD PARK
 TOKYO
 HONG KONG
 NEW YORK

June 14, 1996

Hand Delivered

Lisa Kate Osofsky
 Deputy General Counsel
 Federal Bureau of Investigation
 J. Edgar Hoover Building
 10th and Pennsylvania Avenue, NW
 Washington, DC 20535

Re: Aldrich Manuscript

Dear Ms. Osofsky:

Pursuant to your letter of June 4, 1996, enclosed are eighteen (18) pages of Mr. Aldrich's manuscript. These pages reflect the modifications Mr. Aldrich has made to the eight passages identified in Mr. Shapiro's letter of May 20, 1996.

Sincerely,

Jay B. Stephens

Encs.

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June 17, 1996

VIA FACSIMILE AND COURIER

Jay B. Stephens, Esq.
Law Offices of Pillsbury
Madison & Sutro, LLP
Suite 1200
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5331

RE: PREPUBLICATION REVIEW OF MANUSCRIPT WRITTEN
BY FORMER SPECIAL AGENT GARY ALDRICH

Dear Mr. Stephens:

Today I received the pages that Mr. Aldrich claims to have modified pursuant to objections raised in Mr. Shapiro's letter of May 20, 1996. In two instances Mr. Aldrich is responsive to the FBI's concerns about identifying the public sources of information included in his manuscript. I have identified the properly modified passages on pages 29 and 164. Mr. Aldrich also has clarified the passages on pages 46 and 172 to meet the FBI's concerns.

Despite his demonstrated knowledge of the way to respond to the FBI's concerns and identify public source material, Mr. Aldrich has chosen not to do so on pages 28-29, 33, 84-86 and 100-106. On these pages, Mr. Aldrich either has made no changes or has made none that identify the public sources of his information. For Mr. Aldrich's convenience, I have marked the passages that continue to present the problems identified in Mr. Shapiro's letter of May 20.

If I can further clarify the FBI's continuing concerns, do not hesitate to call.

Very truly yours,

Lisa Kate Osofsky
Deputy General Counsel

Enclosures (18)



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